

Screened by NARA (RD-F) 02-04-2019 FOIA #  
60048 (URTS 16457) DOCID: 70106668

1992





**LIMITED**

**OFFICIAL**

**USE**

Cross Ref

1. Banking Industry/BNL

23 DECEMBER 92

**The attached information must be protected and not released to unauthorized individuals. Use of this cover sheet is in accordance with the Department of Justice regulation on the control of Limited Official Use information.**



DEPARTMENT OF JUSTICE  
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: FRIEDMAN, PAUL L., ESQ., WHITE & CASE, WASHINGTON, DC  
To: LACEY, FREDERICK B., INDEPENDENT COUNSEL (CC: AG.) ODD: NONE  
Date Received: 12-23-92 Date Due: NONE Control #: X92122318052  
Subject & Date

12-23-92 LETTER (COPY) REGARDING THE REPORT OF THE  
INDEPENDENT COUNSEL (IC): THE BANCA NAZIONALE DEL LAVORO  
(BNL) INVESTIGATION. ADVISES THAT THEY REPRESENT  
DENNIS KLOSKE, FORMER UNDER SECRETARY FOR EXPORT ADMINIS-  
TRATION IN THE DEPARTMENT OF COMMERCE, WHO IS MENTIONED IN  
THE IC's DECEMBER 8, 1992, REPORT TO THE ATTORNEY GENERAL ON  
THE BNL INVESTIGATION. THEY ARE WRITING TO CORRECT CERTAIN  
MISSTATEMENTS AND RESPOND TO OTHER STATEMENTS MADE IN THE \*\*

Referred To:	Date:	Referred To:	Date:	
(1) OAG;	12-23-92	(5)		W/IN:
(2)		(6)		
(3)		(7)		PRTY:
(4)		(8)		1S
INTERIM BY:		DATE:		OPR:
Sig. For: NONE		Date Released:		CYN

Remarks

\*\* REPORT. THEY ALSO REQUEST THAT THE IC MAKE THE  
APPROPRIATE CORRECTIONS BY AMENDING HIS REPORT AND THAT HE  
INCLUDE THIS LETTER IN THE RECORD OF HIS INVESTIGATION.  
WITH ATTACHMENTS.

.  
CC INDICATED FOR FBI (VERINDER).  
INFO CC: DAG.

Other Remarks:

(1) FOR INFORMATION.

.  
LIMITED DISTRIBUTION

OLA CONTACT:

12/28 DNF

FILE: INDEPENDENT COUNCIL/LACEY, FREDERICK B.

CROSS REFERENCES:

1. BANKING INDUSTRY/BNL

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY  
\*\*\*\*\*



## WHITE & CASE

UNITED STATES  
NEW YORK  
MIAMI  
LOS ANGELES

1747 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20006-4604  
(202) 872-0013  
FACSIMILE: (202) 872-0210  
TELEX: 197898

LATIN AMERICA  
MEXICO CITY

ASIA/PACIFIC  
TOKYO  
HONG KONG  
JAKARTA  
SINGAPORE

EUROPE  
LONDON  
PARIS  
BRUSSELS  
FRANKFURT  
STOCKHOLM  
MOSCOW  
BUDAPEST  
PRAGUE  
WARSAW  
ISTANBUL  
ANKARA

MIDDLE EAST  
JEDDAH

December 23, 1992

### BY HAND AND BY OVERNIGHT MAIL

The Honorable Frederick B. Lacey  
Independent Counsel  
United States Department of Justice  
Washington, D.C. 20530

Re: Report of the Independent Counsel: The Banco  
Nazionale del Lavoro Investigation

Dear Judge Lacey:

We represent Dennis Kloske, former Under Secretary for Export Administration in the Department of Commerce, who is mentioned in your December 8, 1992 report to Attorney General Barr on the BNL investigation at pages 163-168 and 188-189. We write in order to correct certain misstatements and respond to other statements made in the report. We also request that you make the appropriate corrections by amending your report and that you include this letter in the record of your investigation.

Our reasons for addressing these concerns are two-fold. First, we wish to be certain that the inaccuracies and misstatements set forth in your report are corrected before they inadvertently and irretrievably slip into the public perception or take on an independent life of their own among those who may still be involved in an ongoing Justice Department investigation.

Second, you demonstrated in your report to Attorney General Barr the absence of any Executive Branch conspiracy with regard to the BNL matter and asserted that the press had been "taken in" by certain members of Congress whose allegations against public officials you



said would have been "libelous" if made outside the protective halls of Congress. The Washington Post, Dec. 10, 1992, at 1. We are concerned that your remarks regarding Mr. Kloske, motivated by a letter from a Senator without support in the available evidence and not adequately investigated by you and your staff in the time available, may themselves similarly unfairly tarnish the reputation of a dedicated former government official.

There are four points we wish to address in this letter: (1) Mr. Kloske's asserted unavailability and unresponsiveness to the FBI and your investigation; (2) your implication that Mr. Kloske has not been a credible witness and your wholly unsupported and inaccurate statement that Attorney General Barr's report of August 10, 1992 states that other witnesses have questioned Mr. Kloske's description of events; (3) the fact that the apparent raison d'être for your reaching beyond your mandate (the BNL investigation) to discuss the Commerce Department and Mr. Kloske at all -- that Senator Riegle brought to your attention a new, additional development warranting further investigation -- is not new but is a matter fully discussed by Mr. Kloske with the Commerce Department Inspector General's staff in March of 1991; and (4) there is no evidence that Mr. Kloske acted with an improper motive or intent.

First, on page 167 of your report you state that "[t]he FBI has attempted, on numerous occasions, to contact Kloske but has been unable to do so." This statement unfairly suggests that Mr. Kloske has been non-responsive and has made himself unavailable to answer questions about his role in the generation of documents requested by Congressman Doug Barnard, Jr.'s Subcommittee on Commerce, Consumer and Monetary Affairs of the House Government Operations Committee ("the Barnard Subcommittee") in the Fall of 1990. Nothing could be further from the truth.

The fact is that Mr. Kloske has been fully responsive to and has at all times attempted to cooperate with all federal law enforcement authorities (including the United States Department of Justice and the Federal Bureau of Investigation), Commerce Department investigators, congressional staff, and members of Congress who conducted hearings on some of the issues raised in your report.

Mr. Kloske fully cooperated with the Commerce Department's Inspector General, who conducted an internal



investigation of these matters in the Spring and early Summer of 1991. On March 21, 1991, Mr. Kloske was interviewed at length by agents of the Inspector General's office and explained to them the facts surrounding the generation of the report submitted to the Barnard Subcommittee. These and other interviews and the Inspector General's assessment of the facts culminated in a report of June 4, 1991 to the Secretary of Commerce. Nothing in the Inspector General's June 4, 1991 report remotely suggests that Mr. Kloske was anything other than totally cooperative with the Commerce Department's internal investigation.

On April 8, 1991, Mr. Kloske testified before Representative Gejdenson's Subcommittee on International Economic Policy and Trade of the House Foreign Affairs Committee. He answered all questions put to him by the members of the Subcommittee regarding U.S. export policy toward Iraq.

In late May of 1992, more than one year after Mr. Kloske had left government service, agents of the Federal Bureau of Investigation telephoned Mr. Kloske in Geneva, Switzerland where he had accepted a position in international business in the private sector. The FBI was then conducting its own investigation of the generation of the documents for the Barnard Subcommittee. The FBI agents interviewed Mr. Kloske by telephone on three or four separate occasions regarding the preparation of the Barnard documents. On one of these occasions, the agents were joined in the telephone conversation with Mr. Kloske by the two prosecutors who were supervising the investigation for the Justice Department's Public Integrity Section, David E. Green and Marcia Isaacson. These telephone interviews lasted a total of approximately six hours, and Mr. Kloske cooperated fully and answered all the investigators' inquiries.

In June of 1992, Mr. Kloske again was contacted by telephone in Geneva, this time by staff members from the House Judiciary Committee. The staff members interviewed him for approximately two hours about the facts and circumstances surrounding the generation of the export related documents for the Barnard Subcommittee. Some of Mr. Kloske's comments to the staff, although distorted, were summarized by the staff and were read into the record of a House Judiciary Committee hearing by Congressman Schumer on June 23, 1992.



The Honorable Frederick B. Lacey

-4

On June 22, 1992, Mr. Kloske received a letter from Congressman Jack Brooks, Chairman of the House Judiciary Committee, inviting him to testify the following day before the Judiciary Committee regarding these same matters. That same day, Mr. Kloske wrote to Chairman Brooks declining to appear before the Committee the following day because, having just returned to the United States from abroad, he found that he simply did not have sufficient time on one day's notice to thoroughly review the testimony of others and the possibly relevant documents to prepare himself for the hearing. He requested an opportunity to submit a written statement to the Committee, however, which request was granted. A copy of Mr. Kloske's June 22 letter to Chairman Brooks is enclosed for your convenience as Appendix A.

On June 25, 1992, Mr. Kloske provided the House Judiciary Committee with a 16-page written statement. That statement set forth the facts and detailed explanations regarding the generation of the documents for the Barnard Subcommittee. At Mr. Kloske's instruction we provided a copy of this statement to the FBI. Although we understand from your report that you are aware of Mr. Kloske's June 25 statement, we are enclosing a copy of Mr. Kloske's statement and cover letter for your convenience as Appendix B.

Following Mr. Kloske's submission of his June 25, 1992 statement, one of the FBI agents who had participated in the telephone interviews in May of 1992, Special Agent [redacted] informed us that the FBI wished to interview Mr. KLOSKE again. On behalf of Mr. Kloske, we informed the FBI that Mr. Kloske had to return to Geneva for business matters and would not be making any further statements, but that he wanted to be as helpful as possible.

Therefore, at Mr. Kloske's request, we met directly with Justice Department prosecutors who were handling the Public Integrity Section's investigation, David E. Green and Marcia Isaacson. Both prosecutors had previously participated in interviewing Mr. Kloske in May of 1992. For your information, we have enclosed a letter that we sent to Mr. Green and Ms. Isaacson, dated June 27, 1992, following this meeting (Appendix C).

No further inquiries were made of Mr. Kloske about this matter by any public official until October 22, 1992, when we received a "faxed" letter addressed to



The Honorable Frederick B. Lacey

-5

Mr. Kloske (dated October 21, 1992), from Senator Riegle's Senate Committee on Banking, Housing, and Urban Affairs inviting Mr. Kloske to testify on October 27, 1992, confirmed by a telephone call to me from a member of the staff of the Committee. Senator Riegle posed three specific questions about the role of the Executive Branch in the licensing of exports to Iraq and Mr. Kloske's assessment of whether such exports contributed to Iraq's military capabilities.

By letter of October 23, 1992, Mr. Kloske declined through counsel to travel from Geneva to appear to testify on such short notice, reiterating that he resides and works overseas and, in view of his business obligations, could not return to the United States to appear before the Committee on such short notice. We did, however, provide Senator Riegle with a copy of Mr. Kloske's statement of June 25, 1992 to the House Judiciary Committee. We have enclosed a copy of Senator Riegle's October 21 letter to Mr. Kloske (Appendix D) and our response, dated October 23, 1992 (Appendix E), for your information.

Nothing further occurred in this matter until Friday, December 4, 1992 when Special Agent [ ] of the FBI called our Washington office to speak with me. I was unavailable to speak with Special Agent [ ] at that time, and I could not return the call before the end of the business day. Before I was able to return the call, however, Special Agent [ ] telephoned my colleague, William Currier, the following Monday, December 7, 1992.

Mr. Currier returned the telephone call immediately and discussed with Special Agent [ ] certain requests she had of Mr. Kloske. Mr. Currier explained that some difficulty might be experienced at that point in contacting Mr. Kloske on short notice because of his then current heavy travel schedule in Europe and the Far East. Mr. Currier indicated, however, that he would attempt to reach Mr. Kloske in Europe and pose the questions Agent [ ] had asked, but he told her that it could take some time to reach Mr. Kloske. Mr. Currier agreed to call Special Agent [ ] as soon as he had an answer to her questions.

Special Agent [ ] expressed no need for an immediate response to her questions. She did not indicate that there were any deadlines or that there was any urgency



The Honorable Frederick B. Lacey

-6

to her requests. Nor did she indicate that she was participating in your investigation or acting as an agent for the Independent Counsel. While we were aware that your report to Attorney General Barr was due on December 8, 1992, we understood that your investigation related only to the BNL matter. We therefore assumed that Special Agent [redacted] request was a continuation of the Justice Department's own investigation by the Public Integrity Section in which she had been involved for some time. Mr. Currier obtained the information in due course and returned Special Agent [redacted] telephone call by December 11, 1992. Unable to reach her on that date, he left a message and has tried to contact her on several occasions since then.

It was therefore a surprise to us to read in your report of December 8, 1992 the inaccurate statement that "numerous," "unsuccessful" attempts had been made by you, through the FBI, to contact Mr. Kloske. Lacey Report at 167. Other than the two telephone calls on December 4 and December 7 from the FBI to us regarding Mr. Kloske, we are not aware of any attempts by you, your staff, the FBI or attorneys at the Department of Justice to contact Mr. Kloske or us regarding your investigation. Indeed, the first we knew that your report would say anything about the Commerce Department or Dennis Kloske was when we read pages 163-168 of your report after it was issued. The customary professional way to have handled the matter would have been for you or your staff to contact us as counsel for Mr. Kloske well in advance of the report's issuance and to instruct the FBI agents, if they were acting for you, to inform us of the purpose of their inquiry and the urgent need for a reply.

Given Mr. Kloske's consistent and documented willingness to assist (first directly and then through counsel) the Commerce Department's Inspector General, the Subcommittee on International Economic Policy and Trade of the House Foreign Affairs Committee, the House Judiciary Committee, the Senate Committee on Banking, Housing and Urban Affairs, the Justice Department, and the FBI regarding this matter, it is inaccurate and unfair for you to have suggested that Mr. Kloske has been unavailable, unreachable or uncooperative.

Your misleading and inaccurate statements have now unfortunately found their way into the public media. The New York Times published an editorial on December 11, 1992 reporting that "[w]ithout embarrassment, Judge Lacey



admits he doesn't even know the whereabouts of that Commerce official [who allegedly] . . . falsified shipment records to an inquiring Congress." As we have demonstrated here, at least two Committees of Congress and their staffs, the FBI, and the Justice Department all have been aware of Mr. Kloske's whereabouts and have reached him and spoken with him directly or through counsel. We therefore believe that you, your staff and your agents also were aware of his location and how to reach him. We therefore request that you correct the statements made in your report that both overlook Mr. Kloske's extensive record of cooperation and imply that your team of investigators was unable to reach him.

Second, we are concerned that your report implies that Mr. Kloske has not been a credible witness. For example, on page 165 of the report, you cite to page 28 of Attorney General Barr's August 10, 1992 report to the House Committee on the Judiciary ("the Barr Report") and state that "[n]umerous witnesses . . . have questioned Kloske's alteration of the truck descriptions." The Barr Report, however, says no such thing, either on page 28 or anywhere else. In fact, the Barr Report explicitly states, at page 28, that "Kloske's staff has confirmed [his] account" about the generation of the documents for the Barnard Subcommittee. There is nothing whatsoever in the Barr Report that states, as you have asserted, that "numerous witnesses" have contradicted Mr. Kloske's written statement or other public statements and interviews.

In addition, your assertion in the report that other, unnamed witnesses "generally support" Mr. Kloske's description of the facts fails to present accurately the Barr Report's central conclusion: All available witnesses having knowledge of the facts supported Mr. Kloske's factual statements. Barr Report at 28-30. Accordingly, your report should be corrected to reflect accurately the factual findings of the Barr Report since you have relied upon them.

Third, you state on pages 165-167 of your report that certain assertions by Senator Riegle made in a November 25, 1992 letter to you, concerning the editing of certain information (provided by an exporter) on one particular license (one out of some 1,130 license records described), represented a new, "additional" development that "warrants further investigation." According to your report, this one license related to a shipment from the



Hewlett-Packard company. Lacey Report at 165-166. By implication you seem to suggest that Mr. Kloske failed to address the modification to this license during the earlier investigative process.

Once again, you have failed to present an accurate picture of the facts. In an interview with Andrew Cochran and Aubrey Boutin of the Commerce Department's Inspector General's office, conducted on March 21, 1991, Mr. Kloske noted that changes had been made to the "HP [Hewlett-Packard] computer" license information that was sent to the Barnard Subcommittee. Cochran/Boutin March 21, 1991 Interview Report at 1, ¶ 4. This information was incorporated into the Inspector General's June 4, 1991 report to Secretary Mosbacher, Inspector General's Report at 4, and later in the Inspector General's June 23, 1992 written statement to the House Judiciary Committee submitted nearly one year later. Statement of Frank deGeorge, Inspector General's Testimony at 5 (June 23, 1992). It is noteworthy that the Inspector General characterized all of the changes, with the exception of the truck licenses (which you have not even mentioned in your report), including the Hewlett-Packard change, as being "inconsequential." Inspector General's Report at 1.

As noted, the Inspector General referred to the Hewlett-Packard license information (which you inaccurately suggest first came to light in Senator Riegle's letter to you of November 25) at page 4 of his June 4, 1991 report, and at page 5 of his prepared statement of June 23, 1992. Accordingly, the Hewlett-Packard license information is not a new development, but an old fact thoroughly examined by the Inspector General, discussed with his staff by Mr. Kloske, and described by the Inspector General to the House Judiciary Committee.

Mr. Kloske has always acknowledged that he directed changes be made as he supervised the accumulation of data to create a document that was directly responsive to the inquiries of the Barnard Subcommittee, but only to clarify and to correctly represent the actual record. He has explained his reasons for his actions in relation to the documents prepared for Congressman Barnard. Your implication that the subject of the Hewlett-Packard license information has not been addressed by Mr. Kloske or investigated by the Inspector General, by Attorney General Barr (who had the Inspector General's report), or by



Congress is inaccurate and misleading and should be deleted from your report or corrected.

Finally, we would like to address the substance of your report's conclusions about Mr. Kloske's intent in generating the information in the documents for the Barnard Subcommittee. Lacey Report at 167-168, 188-189. We categorically reject Senator Riegle's suggestion in his November 25, 1992 letter to you (and your apparent adoption of that suggestion) that Mr. Kloske may have acted with improper motive or intent.

First, we find it odd that, notwithstanding your condemnation of Members of Congress who unreasonably and without foundation criticized respected public officials connected with the BNL matter, you would seem to do the same yourself with regard to Mr. Kloske. You appear to have adopted what you characterize as the "protected words and unbridled attacks" of Senator Riegle regarding Mr. Kloske's motive and intent. Press Statement of Frederick B. Lacey at 4 (Dec. 9, 1992). It is of particular concern to us that you should do so when Mr. Kloske is not a "covered" person within the meaning of the Independent Counsel Statute and when the conduct of the Commerce Department and Mr. Kloske were not even within the scope of your designated assignment.

Second, it is also noteworthy and unfortunate that you failed to quote any of Mr. Kloske's statements in his 16-page prepared statement of June 25, 1992 to the House Judiciary Committee. For the record, and to answer directly your question in your report regarding Mr. Kloske's motive and intent, we quote from page 16 of that statement:

...[N]either I nor anyone else involved in this process, to my knowledge, had any desire to or attempted to deceive. While there may have been misunderstandings or miscommunications between and among lawyers, policy experts and technical staff during the intense, short-term and confusing process of compiling the complicated technical data requested by [Congressman Barnard's] Subcommittee, I have complete confidence in the integrity and good intentions of all of those involved in this particular process.



Nothing in the other reports of previous investigations of this matter and nothing in your report suggests that you have uncovered evidence that contradicts Mr. Kloske's assertion. We are certain that you would have reported any such facts if you could have. Thus your comment that you cannot say there was no improper motive or intent is perplexing. You have Mr. Kloske's statement; you have no evidence contradicting the statement (only Senator Riegle's letter which is not evidence); and you have evidence that all others concerned concurred with Mr. Kloske's description of events relating to the generation of the documents in question. Mr. Kloske stands by his remarks and reiterates them here to emphasize the absence of any improper motive or intent on the part of anyone who was involved in the preparation of the documents for Congressman Barnard.

We appreciate the time pressure you were under to conclude your investigation and complete your report by December 8, 1992. The pressures of time, however, do not justify your failure to fully consider the facts and your misstatement of facts. We trust that the foregoing discussion will be a sufficient basis for you in your professional judgment to conclude that these errors should be corrected. It obviously is essential for you to be completely accurate in your report to the Attorney General and to the public. We trust you will correct these factual inaccuracies by issuing an appropriate amendment to your report, by correcting the public record and by including this letter in the record of your investigation.

Very truly yours,



Paul L. Friedman

cc: The Honorable William P. Barr  
Attorney General of the United States

Mr. Fred V. Verinder  
Federal Bureau of Investigation



A





June 22, 1992

The Honorable Jack Brooks  
Chairman  
Committee on the Judiciary  
United States House of Representatives  
2138 Rayburn House Office Building  
Washington, D.C.

Dear Chairman Brooks:

This is in response to your letter of earlier today inviting me to testify before the Committee tomorrow morning, Tuesday, June 23, 1992. Having just returned to the country on Saturday evening and having arrived in Washington only this morning, I spent a good part of the day today considering the issues that I understand will be covered at tomorrow's hearing.

I would like very much to clarify the record and to provide information concerning the policy positions and actions taken by the Department of Commerce and by myself, as Undersecretary of Commerce for Export Administration, in connection with the United States' dealings with Iraq on export matters. I simply have not had the time in this one day, however, to review testimony given by others before your Committee and other committees of the House respecting this matter or to thoroughly review possibly relevant documents. I therefore respectfully decline your invitation to appear before the Committee tomorrow morning.

I intend to continue to review relevant documents and testimony over the next day or two, in an effort to prepare a comprehensive statement on these matters for submission to the Committee. I therefore respectfully

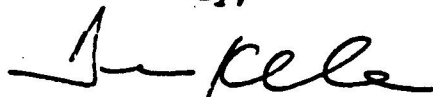


The Honorable Jack Brooks

-2

request the opportunity to submit such a statement for the record no later than 9:30 a.m. on Thursday, June 25, 1992. I will be in contact with your staff. I appreciate your kindness and courtesy in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis Kloske", written over a horizontal line.

Dennis Kloske



**B**



June 25, 1992

The Honorable Jack Brooks  
Chairman  
Committee on the Judiciary  
United States House of Representatives  
2138 Rayburn House Office Building  
Washington, D.C.

Dear Chairman Brooks:

Please find enclosed my prepared remarks regarding the subject matter of the Committee's investigation. I trust that the facts as I have described them in my statement will assist you and other members of the Committee in understanding the events under consideration.

The opportunity to review relevant documents and testimony has enabled me to clarify the record, to the best of my recollection, to provide you with relevant information, and to explain what was at the time a complicated task under difficult circumstances. As I said in the concluding paragraph of my statement, I do not believe anyone involved in these events had any desire to or attempted to deceive anyone, and certainly not the United States Congress.



I appreciate the kindness and courtesy extended to me in this matter by you and your staff, particularly the additional time you afforded me to prepare these remarks.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dennis E. Kloske", with a stylized, cursive script.

Dennis E. Kloske

Enclosure



**STATEMENT OF  
DENNIS E. KLOSKE  
TO THE  
HOUSE COMMITTEE ON THE JUDICIARY**

**June 25, 1992**

My name is Dennis Kloske. I am pleased to have this opportunity to submit a statement to this Committee.

I work as an investment banker in international finance in Europe and in Asia where I advise companies on buying and selling and turning around corporations. The nature of my work takes me overseas for long periods of time. Indeed, I just returned from Europe on Saturday evening, June 20, 1992, and arrived in Washington on Monday morning, June 22.

I served as Under Secretary of Commerce for Export Administration from September 1989 until I resigned from that position effective May 1, 1991. On June 22, 1992, I was invited by the Chairman to appear before this Committee to provide testimony. I respectfully declined the invitation to appear because I simply had not had the time in one day to review testimony given by others or to thoroughly review possibly relevant documents. I therefore requested the opportunity to submit a written statement, and I appreciate the kindness and courtesy of the Committee in affording me that opportunity.

There have been press reports and testimony about the role of the Department of Commerce and my role in



connection with the preparation of summaries of information prepared for the Subcommittee on Commerce, Consumer, and Monetary Affairs of the House Government Operations Committee in the fall of 1990. I would like to make the following points that I believe will clarify the debate.

First, as Under Secretary of Commerce for Export Administration, one of my principal objectives was to strengthen U.S. export control policies concerning the proliferation of missile technologies, biological agents and nuclear-related capabilities throughout the Third World, which, in my view, was posing a rapidly growing danger to the security of the United States and its allies. From September 1989 onward, I had the opportunity to repeatedly express this concern about the dangers of proliferation of weapons of mass destruction in the Third World, and I recommended that we change our export policy toward Iraq to shut down or seriously restrict the flow of sensitive military technologies to Iraq.

Second, I would like to state for the record that during Secretary Mosbacher's tenure, the Commerce Department took increasingly restrictive actions toward the flow of sensitive military technologies to Third World countries. It is important, therefore, to note that the approval of the export of certain vehicles now in contention here took place under a different Administration



in the mid-1980's. It is also important to note for the record that those vehicles were never in fact shipped to Iraq.

Third, I would like to point out that during the period when I was dealing with various congressional inquiries concerning exports to Iraq, I made it very clear to my colleagues, to members of Congress and to their staffs that it was essential to provide a full picture of how the U.S. export control system operated with respect to Iraq. I felt this was particularly important to allay congressional fears about allegations that the U.S. export control system had been undermined by the Commerce Department acting as a rogue agency.

Let me now address the process of preparing the information requested by and produced for Chairman Barnard concerning export licensing to Iraq. First, the guidance that I received from the Department's legal and policy advisors concerning this request was that the Department was to be responsive to the request but was to provide only the information that was strictly responsive and certainly not to volunteer any information beyond that which the Subcommittee had requested. I should add that the Subcommittee's first request was for items of information about export licensing to Iraq and that no documents were requested by the Subcommittee. Rather, the Subcommittee



sought generic kinds of factual information from Commerce. Specifically, the Subcommittee asked for seven types of generic information:

- Disposition of each license application;
- Requestor of each license application;
- Product to be exported;
- Approximate value of sale;
- End-Use;
- End-User; and
- Export Commodity Control Number (ECCN).

To understand the process we went through to compile this information for the Subcommittee, let me first explain what I believe to be the differences between several types of records maintained in the Department of Commerce. First, there are the so-called permanent files of the Bureau of Export Administration, some of which are "hard copy" and others of which are contained on microfiche. These permanent files include the original applications for export licenses; the export licenses themselves; correspondence and memoranda relating to export licenses and applications; and the ultimate dispositions of the applications, including interagency positions and discussions. I did not authorize changes to the permanent files, and I certainly did not intend that the permanent files be modified.



Second, there is what has been referred to as the "database." The database refers to the Bureau's computer database that includes certain items of information entered into the computer system from the permanent files. It is my understanding that this database is continually updated and expanded and that, quite obviously, not all information from the permanent files is included in the database. One can retrieve information in various ways from this database in the form of computer printouts. I did not authorize changes in the database and certainly did not intend that the database be modified.

In order to respond to Chairman Barnard's request for information, we assembled a computer summary which did not previously exist of information that was generated from the database. As the summary was in the process of being prepared and revised, I authorized several editorial changes and modifications to this summary. In my view, the purpose of this editing process was to make the printout of information, which ultimately became the summary produced to Chairman Barnard, accurate and understandable.

I asked the technical experts of the Bureau to pull together the information from the Bureau's database and to assemble a computer printout. Once the information was compiled, a process that took the technical experts about two weeks to accomplish, this summary was annotated



to clarify technical information, to correct mistakes or misleading information and to delete information that the Subcommittee had not asked for. The resulting summary of information was transmitted to Chairman Barnard's staff in October 1990 to familiarize them with U.S. export licensing to Iraq.

Let me emphasize that no documents were requested by the Subcommittee; no documents were provided to the Subcommittee; and no documents were altered in the preparation of the summary of information. All that was done was to edit and modify the printouts generated to produce summaries of the information requested by Chairman Barnard, and the editing was done in order to assure that accurate information was provided. Furthermore, I instructed the technical staff to ensure that a record of the modifications made to the summary printouts was maintained. I did not instruct anyone to change the information already in the database.

Two important decisions were made as the summary of information was prepared for the Subcommittee. When I was first informed that the Commerce Department in the mid-1980's had approved the licensing of approximately \$1 billion of military vehicles to Iraq, described in the database as "vehicles specially designed for military purposes" or "military trucks," I asked the technical



experts (in response to a query from a senior Commerce official) if these vehicles were armored assault vehicles to be used in combat, and whether, by approving these licenses, the Commerce Department had broken the arms embargo that the U.S. had imposed on Iraq. The response was negative to both questions.

I was told by the technical experts that these vehicles were not combat equipment but were dual use equipment that had been modified for non-combat military applications. I asked the technical experts if there was a more specific description of these vehicles that would accurately connote their dual use, non-combat capability. The technical experts told me that both the Department of Commerce and the State Department shared commodity jurisdiction over military vehicles and that the State Department licenses combat vehicles on the munitions list, while the Commerce Department licenses vehicles that have non-combat uses or applications. They informed me that in adjudicating a commodity jurisdiction for these vehicles, both the State and Commerce Departments had used the description "commercial utility cargo vehicles" and that there was supporting documentation for this description.

Because of this information from the technical experts, I was of the view that the generic description used by the Commerce Department in its database to describe



these vehicles -- "vehicles specially designed for military purposes" or "military trucks" -- could easily provide the wrong impression to the Subcommittee that the Commerce Department had indeed broken the arms embargo to Iraq by licensing equipment that had been specially designed for military combat or that the law had been violated.

I believed that the "commercial utility cargo vehicles" description was more accurate and therefore authorized this description to be used in the summary of information to the Subcommittee, provided, however, that the end user (the Iraqi Ministry of Defense) and the end use (cargo transport, personnel transport, or ambulances) were clearly described in the summary. Of course, the export identification number was also included in the summary. Let me emphasize once again that these vehicles were never shipped to Iraq and that the Commerce Department never broke the arms embargo to Iraq.

The second major decision that was made in the preparation of this initial summary of information provided to Chairman Barnard relates to the deletion of interagency positions concerning the individual disposition of each export license case. In his original request, Chairman Barnard had asked for the disposition of each case (approved, rejected, returned without action). This is a crucial issue, as it refers to the customary procedure of



referral and review by other agencies which is a fundamental aspect of the U.S. export control process.

The majority of cases received by the Commerce Department is referred to other agencies for review and approval or rejection. The Energy Department, for example, reviews nuclear-related technologies. The State Department serves as the clearance point for missile-related technologies and foreign policy controls. The Department of Defense plays a major role in reviewing technology categories that have military applications. In this way the Commerce Department benefits from the expertise of other agencies.

I believed it was crucial to show Chairman Barnard and his Subcommittee how the Iraq cases had been disposed of and with what political and expert technology input from other agencies. In my view, to do otherwise could be misleading and not fully responsive to Chairman Barnard's request for information. I was surprised, therefore, when I was informed that the General Counsel's Office of the Department was opposing the inclusion of any information which showed the dispositions of other agencies in reviewing export licenses because it allegedly related to the deliberative process. I was directly informed by the General Counsel that the agency positions were of a



deliberative nature and therefore could not be provided to the Subcommittee.

I told the General Counsel directly that this was a very weak argument and that, without this information, the resulting summary of information to Chairman Barnard would not be fully responsive to his request and would only encourage the Subcommittee to come back and again request that the Department provide the positions of other agencies. I also insisted that the simple notation of agency positions on a specific export license had nothing to do with the deliberative process.

I was informed by the General Counsel that he had made a round of telephone calls to other agencies and that other agencies were opposed to releasing this information. I then asked the General Counsel to call the Counsel to the President, and we were informed that the White House would not approve the transmission of agency positions to Chairman Barnard. I was then instructed by the Commerce Department General Counsel to delete the interagency positions from the first summary printout that went to Chairman Barnard's Subcommittee. I did as I was instructed.

It is also important to note that when the first summary of information was provided to Chairman Barnard in October 1990, his staff was explicitly informed that the



information being provided was a summary of the information requested by Chairman Barnard; that this summary was designed only to familiarize the staff with the record of export licensing to Iraq; and that briefings and eventual access to the Bureau's permanent files would be provided to the staff, with the approval of the Administration's lawyers.

Very shortly after the first summary printout had been delivered to Chairman Barnard's staff, the Department received a second Subcommittee request, demanding the interagency positions on exports to Iraq. This second request generated a tremendous amount of discussion within the Administration and intense legal and technical scrutiny of the first summary printout that had gone to Chairman Barnard in October 1990. There were two main issues: First, whether the additional information requested concerning interagency positions formed part of the deliberative process and, if so, whether it could be refused to the Subcommittee. Second, and in parallel, an intense technical review of the accuracy of the original summary of the prepared (but not submitted) interagency positions took place.

We again generated from the computer the summary printout previously provided to Chairman Barnard, this time, however, also including information about the



interagency positions. I was subsequently informed by my technical staff and the Commerce Department lawyers that the State Department, the Energy Department and the Department of Defense all had requested modifications to the portions of the summary printout now reflecting interagency positions. The State Department even insisted on an annotated version of the summary printout containing interagency positions. I told the technical and legal staff that modifications could be made to the depicted interagency positions provided that they were accurate, that all agencies agreed to these modifications and that the interagency legal body sanctioned these modifications.

The delay and the lengthy review process clearly irritated the Subcommittee, and the threat of a subpoena emerged once again. The State Department was still reluctant to provide the information, and I asked the Commerce Department's General Counsel to intervene with State. The response that came back was that the State Department was still reviewing the material, that it considered the interagency positions to be within the framework of the deliberative process, and that State was most reluctant at this stage to release the requested information. The Commerce Department's second summary of information with interagency information included was finally submitted to the Subcommittee in December, 1990.



At that time a major interagency review mechanism involving all the major agencies was established to review the incoming requests by the Subcommittee for specific files.

In late January 1991, I received a telephone call from the Commerce Department's General Counsel who expressed concern to me that the summaries of information provided to the Congress were not accurate and that he wanted the Bureau to document and explain the changes made in developing the summaries of information. As a result of this request, I asked the Bureau's technical experts, and specifically the Director of the Office of Export Licensing, to prepare a report on the preparation of the summaries that had been transmitted to Chairman Barnard and to document these changes. That report was submitted to me and then forwarded to the Commerce Department's General Counsel on February 26, 1991.

Among other things, the Director's report noted that in reviewing the printouts prior to the first submission to Chairman Barnard, the technical staff had compared for accuracy each entry on the printout with the information that was available on the microfiche records. The staff found 65 instances (out of 1126 licenses processed) where the database did not correctly reflect the disposition of the application in the permanent file. The Director of the Office of Export Licensing reported that



based on concrete and specific documentation available on microfiche the technical staff had corrected the database by including additional information.

It was only when I received this report that I first became aware that Bureau personnel had made changes to the database itself. When I then asked the Director of the Office of Export Licensing and the Director of the Office of Information Resources Management about these changes in the database, I was told that these recommendations for changes had been carefully reviewed and fully documented before any changes to the database had been made. I was also assured by both the Director of the Office of Information Resources Management and the Director of the Office of Export Licensing that the permanent files of the Bureau had not been altered or tampered with. I was satisfied with these explanations and forwarded the report to the Commerce Department's General Counsel.

Several weeks later, the General Counsel informed me that, in view of continuing press allegations about the summaries prepared for Chairman Barnard's Subcommittee, he had requested the Inspector General to carry out an audit of the preparation of the summaries of information for the Subcommittee. I later spoke with the Inspector General and assured him that we would cooperate fully with his review



and that the Bureau's technical staff was looking forward to meeting with him.

During my interview with the Inspector General's staff, I fully explained the guidance I had received with respect to the preparation of the summaries for Chairman Barnard. I also detailed the rationale for the description "commercial utility cargo vehicles" and noted the concern we had at the time that this non-combat equipment would be portrayed, incorrectly, as designed for combat use. I also stated to the Inspector General's staff that I was unaware of any modifications by the technical staff to the permanent files.

Before I left the Department on May 1, 1991, I spoke twice to the Inspector General, and he indicated on both occasions that he saw no major issues that I or the Bureau needed to be concerned about. The Inspector General's main concern was the possibility that someone might have destroyed permanent files and he said that had not taken place.

I would like to close with the following observations. First, with respect to my own motives and intentions, I favored an open process on agency positions in dealing with Congress and giving congressional access to records. Second, I had formally expressed my deep reservations about a liberal policy regarding export of



sensitive technologies to Iraq. Finally, neither I nor anyone else involved in this process, to my knowledge, had any desire to or attempted to deceive. While there may have been misunderstandings or miscommunications between and among lawyers, policy experts and technical staff during the intense, short-term and confusing process of compiling the complicated technical data requested by the Subcommittee, I have complete confidence in the integrity and good intentions of all of those involved in this particular process.



C



## WHITE & CASE

1747 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20006-4604

(202) 872-0013

FACSIMILE: (202) 872-0210

TELEX: 197898

UNITED STATES  
NEW YORK  
MIAMI  
LOS ANGELES

LATIN AMERICA  
MEXICO CITY

ASIA / PACIFIC  
TOKYO  
HONG KONG  
JAKARTA  
SINGAPORE

EUROPE  
LONDON  
PARIS  
BRUSSELS  
FRANKFURT  
STOCKHOLM  
MOSCOW  
BUDAPEST  
PRAGUE  
WARSAW  
ISTANBUL  
ANKARA

MIDDLE EAST  
JERUSALEM

PLF:MVA

June 27, 1992

FOIA(b)(7) - (C)

David E. Green, Esq.  
Marcia Isaacson, Esq.  
Trial Attorneys  
Public Integrity Section  
Criminal Division, Room 12100  
U.S. Department of Justice  
1400 New York Avenue, N.W.  
Washington, D.C. 20005

Re: Dennis E. Kloske

Dear David and Marcia:

This letter concerns your request to reinterview our client, Dennis E. Kloske, concerning the subject matter of recent hearings before the U.S. House of Representatives Committee on the Judiciary. As we explained to you, Mr. Kloske had returned only recently to the United States from abroad, and there was not sufficient time under the circumstances to prepare him for such an interview. Moreover, in the current, uncertain political climate, such an interview at this time might not necessarily be in Mr. Kloske's interests. A more suitable opportunity in another forum might present itself in the future. It remains Mr. Kloske's desire to assist those who are attempting to learn and understand the facts, as his extensive, exhaustive cooperation with all relevant investigatory bodies demonstrates.

Mr. Kloske was interviewed by you or FBI Agent [redacted] in three separate telephone conversations lasting two hours or more in late May or early June, 1992. On Thursday, June 25, you also received directly from us



David E. Green, Esq.  
Marcia Isaacson, Esq.

-2

Mr. Kloske's lengthy, written statement to the House Judiciary Committee. Mr. Kloske has also previously testified before the House Foreign Affairs Subcommittee about aspects of the events under investigation by the Department of Justice and the House Judiciary Committee.

We believe that Mr. Kloske's record of cooperation, candor and concern for the integrity of the fact-finding investigations reconfirms his good faith, good intentions and proper motives. Moreover, as is set forth in his June 25 statement to the House Judiciary Committee, it is Mr. Kloske's firm view that no one involved in the process of preparing the materials for Chairman Barnard had any improper purpose or intent.

As Mr. Kloske's June 25 statement also demonstrates, compilation of the information requested by Chairman Barnard's Subcommittee was a complicated process requiring data collection, coordination, and development of factual summaries (not previously existing) in a very short timeframe. Many technicians, legal advisers and policy experts from several agencies all participated to produce a final product.

The ultimate purpose of these efforts was to produce an accurate, factual summary that was not misleading and that responded to the requests of the Subcommittee. Our client believes that this purpose was accomplished.

We appreciate your consideration and understanding as expressed during our conversations with you over the last two days. Mr. Kloske has also asked us to convey his appreciation to Agent [REDACTED] for her courtesy and patience. Mr. Kloske is gratified that his statements and other efforts at cooperation have been helpful to those

FOIA(b)(7) - (C)

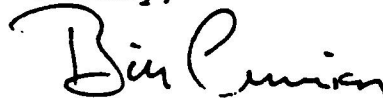


David E. Green, Esq.  
Marcia Isaacson, Esq.

- 3

wishing to review these matters fairly and impartially. If it becomes necessary, we look forward to another opportunity to meet again with you directly.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bill Friedman". The signature is fluid and cursive, with the first name "Bill" being more prominent than the last name "Friedman".

Paul L. Friedman  
G. William Currier

cc: Mr. Dennis E. Kloske



D



DONALD W. REGGIE JR. MICHIGAN, CHAIRMAN  
ALAN CRANSTON, CALIFORNIA  
PAUL S. SARABANZ, MARYLAND  
CHRISTOPHER J. DODD, CONNECTICUT  
ALAN J. BROWN, ILLINOIS  
JIM EASTER, TENNESSEE  
TERRY SANFORD, NORTH CAROLINA  
RICHARD C. SHELBY, ALABAMA  
BOB GRAHAM, FLORIDA  
TIMOTHY E. WIRTH, COLORADO  
JOHN F. KERRY, MASSACHUSETTS  
RICHARD H. BRYAN, NEVADA  
JACK GARN, UTAH  
ALFONSE M. STAMATO, NEW YORK  
PHIL GRAMM, TEXAS  
CHRISTOPHER S. BOND, MISSOURI  
CONNIE MACK, FLORIDA  
WILLIAM V. VHTH, JR., DELAWARE  
PETE V. DOMINGUEZ, NEW MEXICO  
NANCY LINDEN KASTENBAUM, KANSAS  
ARLEN SPECTER, PENNSYLVANIA

STEVEN S. HARRIS, STAFF DIRECTOR AND CHIEF COUNSEL  
LAWAN SMITH, REPUBLICAN STAFF DIRECTOR AND ECONOMIST

## United States Senate

COMMITTEE ON BANKING, HOUSING, AND  
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

October 21, 1992

Mr. Dennis Kloske  
Former Undersecretary of Commerce  
for Export Administration  
4808 S. 29th Street  
Arlington, VA 22206

Dear Mr. Kloske:

This letter is to formally invite you to testify before the Senate Banking Committee on Tuesday, October 27, 1992 at 10:00 a.m. at an oversight hearing on U.S. export control policy toward Iraq prior to Iraq's invasion of Kuwait on August 2, 1990. The hearing will focus on whether the United States allowed the export to Iraq of items that strengthened Iraq's conventional or nonconventional military capabilities.

In your prepared testimony I would appreciate your addressing the following questions:

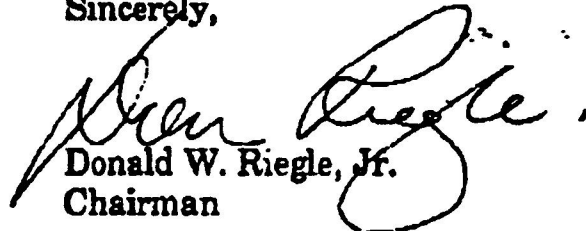
1. Did the United States license exports to Iraq that could have contributed to that country's conventional and/or nonconventional military capabilities?
2. Did Iraq utilize such exports to strengthen its military capabilities?
3. To what extent has the Administration accurately disclosed whether its licensing of dual-use exports strengthened Iraq's military capabilities?

Any other comments you might wish to make regarding these matters would be welcomed.



The hearing will take place in the Committee hearing room, SD-538. The Committee's rules require you to deliver at least 150 copies of your written statement to room 534 of the Dirksen Building by 10:00 a.m. on Monday, October 26. You should also submit a brief summary of your testimony. Early submission of your statement and the summary will give Members of the Committee and staff the opportunity to more thoroughly review them prior to the hearing. Please limit your oral opening remarks to 10 minutes. Your full written statement will be included in the record. If you have any questions about this hearing, please contact Patrick Mulloy of the Banking Committee staff at 224-7391.

Sincerely,



Donald W. Riegle, Jr.  
Chairman

DWR/pam



E



## WHITE & CASE

UNITED STATES  
NEW YORK  
MIAMI  
LOS ANGELES

LATIN AMERICA  
MEXICO CITY

ASIA/PACIFIC  
TOKYO  
HONG KONG  
JAKARTA  
SINGAPORE

1747 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20006-4604  
(202) 872-0013  
FACSIMILE: (202) 872-0210  
TELEX: 197898

EUROPE  
LONDON  
PARIS  
BRUSSELS  
FRANKFURT  
STOCKHOLM  
MOSCOW  
BUDAPEST  
PRAGUE  
WARSAW  
ISTANBUL  
ANKARA

MIDDLE EAST  
JEDDAH

PLF:MVA

October 23, 1992

### BY HAND

The Honorable Donald W. Riegle, Jr.  
Chairman  
Committee on Banking, Housing, and  
Urban Affairs  
United States Senate  
Washington, D.C. 20510-6075

Re: Dennis Kloske

Dear Mr. Chairman:

I am responding to your letter, faxed to me yesterday, October 22, 1992, as counsel for Dennis Kloske, formerly Undersecretary of Commerce for Export Administration. Your letter invites Mr. Kloske to testify before the Senate Banking Committee on Tuesday, October 27, 1992, at 10:00 a.m.

As I explained to Patrick Mulloy of your Staff, Mr. Kloske presently resides and works overseas. He has no current plans to return to the United States and, in view of pressing business obligations, it would be impossible for him to appear before your Committee on such short notice in any event. In an effort to be helpful, however,

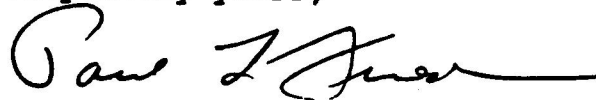


The Honorable Donald W. Riegle, Jr.

-2

at Mr. Kloske's request I am enclosing the statement he previously provided to the House Committee on the Judiciary on June 25, 1992.

Very truly yours,

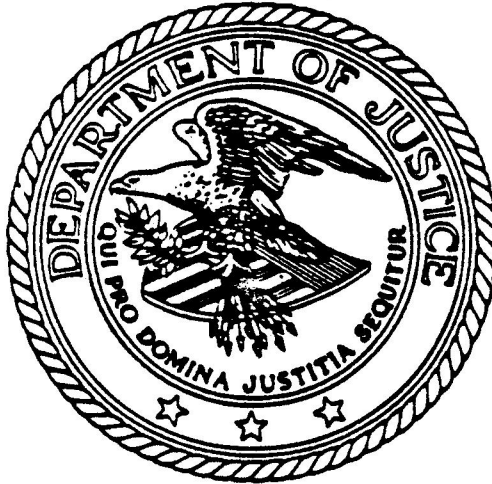
A handwritten signature in black ink, appearing to read "Paul L. Friedman", with a long horizontal flourish extending to the right.

Paul L. Friedman

Enclosure



# DOJ EXECUTIVE SECRETARIAT CROSS-REFERENCE RECORD



**CONTROL NUMBER:** 92121517727

LEAHY, PATRICK, SENATOR

---

THE ENTIRE DOCUMENT PACKET FOR THE CONTROLLED  
CORRESPONDENCE INDICATED BY THE ABOVE EX.SEC.  
CONTROL NUMBER HAS BEEN FILED IN THE FOLLOWING  
PRIMARY FILE LOCATION WITHIN THE SUBJECT FILES  
OF THE ATTORNEY GENERAL.

**PRIMARY FILE:** BANKING INDUSTRY/BNL

11 December 1992

---

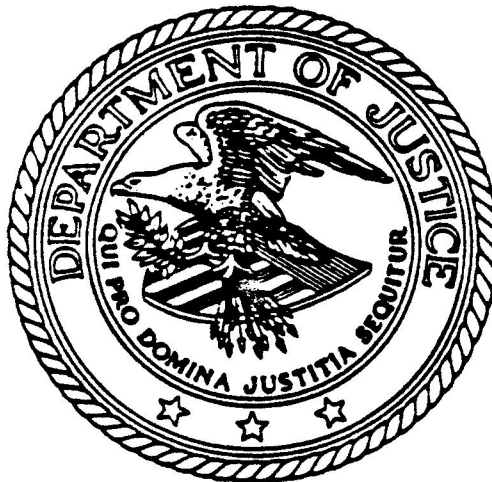
---

INDEPENDENT COUNSEL/Lacey, Frederick B.

11 DEC 92



# DOJ EXECUTIVE SECRETARIAT CROSS-REFERENCE RECORD



**CONTROL NUMBER:** 92121117639

BARR, WILLIAM P., AG

---

THE ENTIRE DOCUMENT PACKET FOR THE CONTROLLED  
CORRESPONDENCE INDICATED BY THE ABOVE EX.SEC.  
CONTROL NUMBER HAS BEEN FILED IN THE FOLLOWING  
PRIMARY FILE LOCATION WITHIN THE SUBJECT FILES  
OF THE ATTORNEY GENERAL.

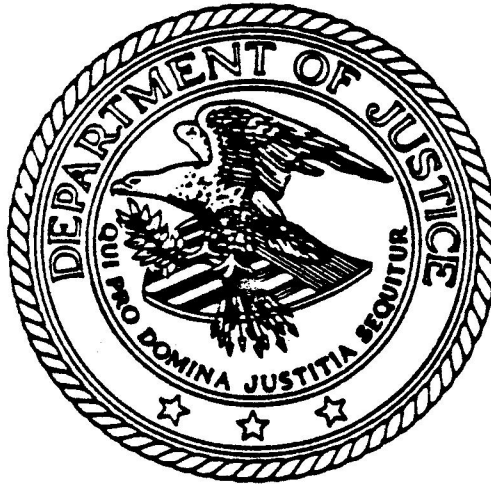
**PRIMARY FILE:** BANKING INDUSTRY/BNL

10 December 1992

---



# DOJ EXECUTIVE SECRETARIAT CROSS-REFERENCE RECORD



**CONTROL NUMBER:** 92112416941

BROOKS, JACK, CONGRESSMAN

---

THE ENTIRE DOCUMENT PACKET FOR THE CONTROLLED  
CORRESPONDENCE INDICATED BY THE ABOVE EX.SEC.  
CONTROL NUMBER HAS BEEN FILED IN THE FOLLOWING  
PRIMARY FILE LOCATION WITHIN THE SUBJECT FILES  
OF THE ATTORNEY GENERAL.

**PRIMARY FILE:** BANKING INDUSTRY/BNL

20 November 1992



DEPARTMENT OF JUSTICE  
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: LACEY, FREDERICK B., ESQ., INDEPENDENT ADMINISTRATOR, NJ  
To: AG. ODD: NONE  
Date Received: 11-13-92 Date Due: NONE Control #: X92111316504  
Subject & Date

11-06-92 LETTER REGARDING THE BANCA NAZIONALE DEL LAVORO  
(BNL) INVESTIGATION. HE ACKNOWLEDGES RECEIPT OF THE AG'S  
LETTER DATED OCTOBER 27, 1992, ACCEPTING HIS RECOMMENDATION  
IN HIS LETTER OF OCTOBER 26, 1992, AND THE AG'S REQUEST THAT  
HE CONDUCT A "PRELIMINARY INVESTIGATION" UNDER 28 U.S.C.  
SECTION 592 INTO THE SUBJECT DEFINED IN THE LETTER.

SEE EXEC. SEC. 92110916209 - CONTROL SHEET ATTACHED.

Referred To:	Date:	Referred To:	Date:	
(1) OAG;	11-13-92	(5)		W/IN:
(2)		(6)		
(3)		(7)		PRTY:
(4)		(8)		1S
INTERIM BY:		DATE:		OPR:
Sig. For: NONE		Date Released:		MAU

Remarks  
INFO CC: DAG.  
(1) FOR INFORMATION.

Other Remarks:

OLA CONTACT:  
11/17/92 DF FYI  
FILE: INDEPENDENT COUNSEL/LACEY, FREDERICK B  
CROSS REFERENCES:  
1. BANKING INDUSTRY/BNL

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY  
\*\*\*\*\*

6 NOVEMBER 92



# LEBOEUF, LAMB, LEIBY & MACRAE

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

FREDERICK B. LACEY  
WILLIAM R. HOLZAPFEL  
LAWRENCE E. MILLER  
THEODORE D. ADEN  
THOMAS W. GREELISH (1939-1991)  
JOSEPH A. TATO  
WESLEY S. CALDWELL III  
CHARLES M. LIZZA  
DAVID S. TURETSKY  
JEANNETTE M. BOND  
RICHARD B. MCGLYNN  
STEPHEN B. GENZER  
REYNOLD NEBEL, JR.  
RESIDENT NEW JERSEY PARTNERS  
  
COUNSEL:  
JOHN F. MACLEOD  
MARGARET M. FOTI

## ONE GATEWAY CENTER NEWARK, NJ 07102-5311

(201) 643-8000

FACSIMILES:

(6TH FLR) 201-622-6693

201-643-6111

(7TH FLR) 201-643-0437

NEW YORK, NY  
WASHINGTON, DC  
ALBANY, NY  
BOSTON, MA  
HARRISBURG, PA  
HARTFORD, CT  
LOS ANGELES, CA  
SALT LAKE CITY, UT  
SAN FRANCISCO, CA  
JACKSONVILLE, FL  
RALEIGH, NC  
LONDON, ENGLAND  
BRUSSELS, BELGIUM  
MOSCOW, RUSSIAN FEDERATION

November 6, 1992

Honorable William P. Barr  
Attorney General of the United States  
Washington, D.C. 20530

Re: BNL Investigation

Dear Attorney General Barr:

Having returned from Rome yesterday, I acknowledge receipt of your letter of October 27, 1992, accepting my recommendation in my letter of October 26, and requesting that I conduct a "preliminary investigation" under 28 USC 592 into the subject defined in your letter.

I am mindful of your request that I report to you with the results of my preliminary investigation not later than December 8, and I shall do my best to meet that deadline.

Sincerely yours,



Frederick B. Lacey

FBL:abw



DEPARTMENT OF JUSTICE  
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: LACEY, FREDERICK B., ESQ., INDEPENDENT ADMINISTRATOR, NJ  
To: EDELSTEIN, HON. DAVID N., USDC, NY (CC: AG.) ODD: NONE  
Date Received: 11-09-92 Date Due: NONE Control #: X92110916193  
Subject & Date

11-04-92 LETTER (COPY) ACKNOWLEDGING RECEIPT OF  
JUDGE EDELSTEIN'S OPINION AND ORDER DATED NOVEMBER 2, 1992,  
AND PROVIDING A SUPPLEMENT TO HIS APPLICATION IN HIS  
CAPACITY AS A MEMBER OF THE INDEPENDENT REVIEW BOARD -  
INDEPENDENT COUNSEL APPOINTMENT. PROVIDES DETAILS IN  
LETTER REGARDING THE BANCA NAZIONALE DEL LAVORO  
INVESTIGATION; WITH ENCLOSURES.

(SEE PRIOR CORRESPONDENCE.)

	Referred To:	Date:	Referred To:	Date:	
(1)	OAG;	11-09-92	(5)		W/IN:
(2)			(6)		
(3)			(7)		PRTY:
(4)			(8)		1S
	INTERIM BY:		DATE:		OPR:
	Sig. For: NONE		Date Released:		MAU

Remarks

INFO CC: DAG.

(1) FOR INFORMATION.

LIMITED DISTRIBUTION.

Other Remarks:

OLA CONTACT:

11/9/92 DF FYI

FILE: INDEPENDENT COUNSEL/LACEY, FREDERICK B

CROSS REFERENCES:

1. BANKING INDUSTRY/BNL

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY  
\*\*\*\*\*

4 NOVEMBER 92



OFFICE OF THE INDEPENDENT ADMINISTRATOR  
c/o LeBOEUF, LAMB, LEIBY & MacRAE  
Gateway Center I, Suite 603  
Newark, NJ 07102-5311  
(201) 643-8000  
Fax (201) 622-6693

92 NOV -9 09:30

Frederick B. Lacey  
Independent Administrator

EXECUTED

November 4, 1992

**VIA HAND DELIVERY**

Honorable David N. Edelstein  
United States District Court  
United States Courthouse, Room 2104  
New York, New York 10007

Re: Supplement to Application by Frederick Lacey in his  
Capacity as a Member of the Independent Review Board  
-- Independent Counsel Appointment

Dear Judge Edelstein:

This will acknowledge receipt of your Opinion and Order dated November 2, 1992. Notwithstanding Your Honor's having granted my Application, it is desired that the record be supplemented in the following respect:

On October 26, 1992, in my capacity as Independent Counsel, according to 28 CFR Part 600, I recommended to the Honorable William P. Barr, Attorney General of the United States, pursuant to Independent Counsel Statute 28 U.S.C. Chapter 40, that a preliminary investigation should commence in the matter of United States v. Drogoul, et al.

Attached hereto as Exhibit A is my letter of recommendation of the preliminary investigation. On October 27, 1992, Attorney General Barr responded as follows:

Pursuant to your appointment as Independent Counsel under 28 CFR Part 600, this letter will memorialize my request that you conduct a preliminary investigation, as defined in 28 USC 592, of matters related to the



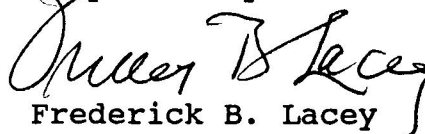
production of CIA documents and information concerning the Banca Nazionale del Lavoro (BNL) loans to or on behalf of Iraq, to the Department of Justice, the United States Attorney's Office in Atlanta, the United States District Court in Atlanta, and the United States Congress.

Although under 28 USC 592(a)(1) you have 90 days to complete a preliminary investigation, I ask that you report to me on the results of your preliminary investigation as soon as possible, and in no event later than December 8, 1992, so that should a determination be made that application to the court for appointment of an independent counsel pursuant to 28 USC 592 is warranted, such application can be made before expiration of the Independent Counsel Statute.

Attached hereto as Exhibit B is a copy of Attorney General Barr's letter.

I am transmitting a "backed" original and two copies of this Supplement along with a "backed" original and two copies of an Affidavit of Service. I respectfully request that, if Your Honor finds it appropriate to do so, you have a member of your staff file the "backed" original Supplement and Affidavit of Service with the Clerk's office.

Respectfully submitted,

  
Frederick B. Lacey

FBL:abw  
Enclosures

cc: Richard N. Gilberg, Esq.  
Charles M. Carberry, Esq.  
Steven C. Bennett, AUSA  
Judith A. Scott, Esq.  
Mr. Ronald Carey  
Mr. Harold E. Burke  
Honorable William H. Webster  
Honorable William P. Barr



# LEBOEUF, LAMB, LEIBY & MACRAE

A PARTNERSHIP HOLDING PROFESSIONAL CORPORATIONS

FREDERICK B. LACEY  
WILLIAM R. HOLZAPFEL  
LAWRENCE E. MILLER  
THEODORE D. ADEN  
THOMAS W. GREELEIGH 939.990  
JOSEPH A. TATO  
WESLEY S. CALDWELL II  
CHARLES M. LIZZA  
DAVID S. TURETSKY  
JEANNETTE M. BOND  
RICHARD B. MCGLYNN  
STEPHEN B. GENZER  
REYNOLD NEBEL, JR.  
RESIDENT NEW JERSEY PARTNERS  
  
COUNSEL:  
JOHN F. MACLEOD  
MARGARET M. FOTI

ONE GATEWAY CENTER  
NEWARK, NJ 07102-5311

201.643.8000

FACS FILES

5TH FLOOR 201.622.6693

201.643.6111

17TH FLOOR 201.643.0437

October 26, 1992

NEW YORK, NY  
WASHINGTON, DC  
ALBANY, NY  
BOSTON, MA  
HARRISBURG, PA  
HARTFORD, CT  
LOS ANGELES, CA  
SALT LAKE CITY, UT  
SAN FRANCISCO, CA  
JACKSONVILLE, FL  
RALEIGH, NC  
LONDON, ENGLAND  
BRUSSELS, BELGIUM  
MOSCOW, RUSSIAN FEDERATION

The Honorable William P. Barr  
Attorney General of the United States  
United States Department of Justice  
Washington, D.C. 20530

Re: Banca Nazionale del Lavoro Matter

Dear Mr. Attorney General:

On October 16, 1992, you appointed me Independent Counsel under 28 CFR Part 600, in connection with the above-entitled matter. A copy of that letter is attached hereto as Exhibit A. Following my appointment, I commenced work immediately.

Included in the tasks you have asked me to perform is the following:

5. Supervise any applicable preliminary inquiries or preliminary investigations under the independent counsel statute, and advise . . . [you] as to whether to seek appointment of an independent counsel under the statute.

Thus, I shall now address that directive.

## The Congressional Letters

As of this date, you have before you, and have made available to me, three separate requests that you act under the Independent Counsel Statute, 28 U.S.C. §§591, et seq., to seek appointment of Independent Counsel by the division of the court established under 28 U.S.C. §49. These requests are included in the following letters:



Mr. Attorney General:  
October 26, 1992  
Page 2

1. Letter of October 14, 1992, from the Honorable David L. Boren, Chairman of the United States Senate Select Committee on Intelligence (the "Boren letter"). Exhibit B.
2. The United States House of Representatives Committee on the Judiciary's letter of October 15, 1992. Exhibit C.
3. The United States Senate Committee on the Judiciary's letter of October 19, 1992. Exhibit D.

The Independent Counsel Statute

Section 591 of 28 U.S.C. reads in pertinent part as follows:

**(a) Preliminary investigation with respect to certain covered persons.** The Attorney General shall conduct a preliminary investigation in accordance with section 592 [28 U.S.C. § 592] whenever the Attorney General receives information sufficient to constitute grounds to investigate whether any person described in subsection (b) may have violated any Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction.

**(b) Persons to whom subsection (a) applies.** The persons referred to in subsection (a) are-

\* \* \*

(4) any Assistant Attorney General and any individual working in the Department of Justice who is compensated at a rate of pay at or above level III of the Executive Schedule under section 5314 of title 5 [5 U.S.C. §5314];

(5) the Director of Central Intelligence, the Deputy Director of Central Intelligence, and the Commissioner of Internal Revenue;

\* \* \*



Mr. Attorney General:  
October 26, 1992  
Page 3

(c) Preliminary investigation with respect to persons not listed in subsection (b). The Attorney General may conduct a preliminary investigation in accordance with section 592 [28 U.S.C. §592] if--

(1) the Attorney General received information sufficient to constitute grounds to investigate whether any person other than a person described in subsection (b) may have violated any Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction; and

(2) the Attorney General determines that an investigation or prosecution of the person, with respect to the information received, by the Attorney General or other officer of the Department of Justice may result in a personal, financial, or political conflict of interest.

(d) Examination of information to determine need for preliminary investigation.

(1) Factors to be considered. In determining under subsection (a) or (c) (or section 592(c)(2) [28 U.S.C. §592(c)(2)]) whether grounds to investigate exist, the Attorney General shall consider only--

- (A) the specificity of the information received; and
- (B) the credibility of the source of the information.

(2) Time period for making determination. The Attorney General shall determine whether grounds to investigate exist not later than 15 days after the information is first received. If within that 15-day period the Attorney General determines that the information is



Mr. Attorney General:  
October 26, 1992  
Page 4

not specific or is not from a credible source, then the Attorney General shall close the matter. If within that 15-day period the Attorney General determines that the information is specific and from a credible source, the Attorney General shall, upon making that determination, commence a preliminary investigation with respect to that information. If the Attorney General is unable to determine, within that 15-day period, whether the information is specific and from a credible source, the Attorney General shall, at the end of that 15-day period, commence a preliminary investigation with respect to that information.

Pertinent too is section 592(g) of the Independent Counsel Statute. It provides, with respect to the letters from the Senate and House Judiciary Committees, that those bodies "may request in writing that the Attorney General apply for the appointment of an independent counsel" and that, not later than 30 days after receipt of such a request, the Attorney General "shall submit" to such body "a report on whether the Attorney General has begun or will begin a preliminary investigation . . . with respect to which the request is made. . . ."

#### Discussion

As to the letters from the Senate and House Judiciary Committees, it would appear that, under 28 U.S.C. §592, you have thirty days, or until November 18, and November 14, 1992, respectively, to determine whether a preliminary investigation is warranted as to the matters alleged by those bodies.

Section 592(g) is not applicable to Senator Boren's letter of October 14, because that letter is not from a Judiciary Committee or members thereof. Instead, the information in the Boren letter appears to trigger the response provision of section 591(d)(2); that is, fifteen days "after the information is first received," subject of course to consideration of the elements to be considered under that subdivision. Thus, a response to the Boren letter would be due on October 29.



Mr. Attorney General:  
October 26, 1992  
Page 5

As quoted above, section 591(d)(1) also states that in "determining . . . whether grounds to investigate exist, the Attorney General shall consider only -

- (A) the specificity of the information received; and
- (B) the credibility of the source of the information."

Applying these limited tests to Senator Boren's letter, I find them to be met.

Finally, I must consider whether the information the Department of Justice has received "is sufficient to constitute grounds to investigate whether any person . . . may have violated any Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction." 28 U.S.C. §591(a), (b) and (c).

Senator Boren's letter makes serious allegations against the Department of Justice and the Central Intelligence Agency relating to events occurring since August 10, 1992, the date of your Report to the Committee on the Judiciary of the House of Representatives. While Senator Boren cites to no specific statute, his allegations suggest he has in mind, among other statutes, 18 U.S.C. §1503. See also, the letter of October 19, 1992, from the Senate Judiciary Committee, at p. 1.

Item 1 of your letter appointing me provides:

1. Investigate all aspects of the production of CIA documents and information concerning the Banca Nazionale del Lavoro (BNL) loans to or on behalf of Iraq, to the Department of Justice, United States Attorney's Office in Atlanta, and the United States Congress. Your investigation should include, but not be limited to, the Department of Justice's role in that production of documents and information, and any statements by CIA or Department of Justice officials concerning said production.

Thus, since October 16, the day of my appointment, I have been investigating the same realm of facts covered by Senator Boren's allegations. Indeed, in the course of that investigation, at my request, Senator Boren has permitted me to review, on a non-disclosure basis, certain materials gathered by his Committee.

I am far from concluding that there has been a violation of any Federal statutes, even assuming the validity of all of the



Mr. Attorney General:  
October 26, 1992  
Page 6

information gathered to date by Senator Boren and me. Certainly, Senator Boren does not say so, nor do I. On the other hand, I must recommend to you that a preliminary investigation be undertaken pursuant to §591(a) and (c).

You will of course note that in making this recommendation, I do not distinguish between so-called "covered" persons referred to in §591(b), as to whom §591(a) states that you "shall" proceed, and persons not listed in subsection (b), as to whom you "may" conduct such a preliminary investigation. It is my recommendation that the preliminary investigation should concern all persons, "covered" or not, who may have been related in some way to the allegations in Senator Boren's letter and the matters referred to in your letter of appointment.

I must also bring to your attention the Opinion and Order (Exhibit E) of United States District Judge Marvin Shoob. As you know, Judge Shoob has presided over the BNL matter in the United States District Court for the Northern District of Georgia. On October 5, 1992, Judge Shoob entered an Order, with an Opinion, in which he made very serious charges against the United States and its prosecution of the indictment of Christopher Drogoul and others. No. 1:91-Cr. 078-MRS.

The proceedings before Judge Shoob were very extensive. Much of what he charges has already been addressed in your August 10, 1992, Report to the Committee on the Judiciary of the House of Representatives. See Report, pp. 11, 35, et seq. In any case, Judge Shoob's charges are characterized as "tentative conclusions" and deal almost exclusively with the prosecutorial strategy and decisions. Nothing is alleged that equates to a crime by Government officials. Instead, Judge Shoob, among other things, simply reflects his belief that the Government's theory of BNL-Rome's non-involvement in Drogoul's illegal activities was ill-founded.

Judge Shoob is also critical of the Central Intelligence Agency, Opinion at 12-13. Again, however, no crime is reflected in the allegations.

Finally, Judge Shoob "strongly recommends that an independent prosecutor be named to investigate this matter."

While I do not find that the Independent Counsel Statute is triggered by Judge Shoob's Opinion and Order, they should be carefully considered and, in keeping with my assigned responsibility to advise you as to "further inquiries that should be made," Item 8 of the Letter of Appointment, Exhibit A, I



Mr. Attorney General:  
October 26, 1992  
Page 7

strongly recommend that, to the extent you have not already done so, his Opinion and Order be the subject of further investigation.

Finally, I know you will be pleased to hear that I have received complete cooperation from the persons within the Department of Justice with whom I have had contact. Additionally, I have been assured of complete cooperation from Judge Sessions, Director of the Federal Bureau of Investigation, and Director Gates and Inspector General Hitz of the Central Intelligence Agency.

Very truly yours,

A handwritten signature in dark ink, appearing to be 'F. B. Lacey', written over a horizontal line.

Frederick B. Lacey

FBL:abw





Office of the Attorney General  
Washington, D. C. 20530

October 27, 1992

Judge Frederick B. Lacey  
LeBoeuf, Lamb, Leiby & MacRae  
One Gateway Center  
Newark, NJ 07102-5311

Banca Nazionale del Lavoro Matter

Dear Judge Lacey:

Pursuant to your appointment as Independent Counsel under 28 CFR Part 600, this letter will memorialize my request that you conduct a preliminary investigation, as defined in 28 USC 592, of matters related to the production of CIA documents and information concerning the Banca Nazionale del Lavoro (BNL) loans to or on behalf of Iraq, to the Department of Justice, the United States Attorney's Office in Atlanta, the United States District Court in Atlanta, and the United States Congress.

Although under 28 USC 592(a)(1) you have 90 days to complete a preliminary investigation, I ask that you report to me on the results of your preliminary investigation as soon as possible, and in no event later than December 8, 1992, so that should a determination be made that application to the court for appointment of an independent counsel pursuant to 28 USC 592 is warranted, such application can be made before expiration of the Independent Counsel Statute.

Sincerely,

A handwritten signature in dark ink, appearing to read "W. P. Barr", is written over a horizontal line.

William P. Barr  
Attorney General



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	88 CIV. 4486 (DNE)
	:	
Plaintiff,	:	
	:	
v.	:	AFFIDAVIT OF SERVICE
	:	
INTERNATIONAL BROTHERHOOD OF	:	
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN:	:	
AND HELPERS OF AMERICA, AFL-CIO,	:	
et al.	:	
	:	
Defendants.	:	

Delma Gama hereby deposes and says:

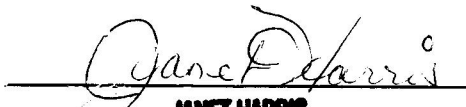
1. I am a secretary in the office of Frederick B. Lacey, Independent Administrator. On November 6, 1992, I caused to be delivered via HAND DELIVERY to the Honorable David N. Edelstein one executed original and two copies of the Supplement to Application by Frederick B. Lacey, in his capacity as a member of the Independent Review Board.

2. I also caused a copy of the Application to be delivered via facsimile and UPS NEXT DAY AIR to:

Richard N. Gilberg, Esq.  
Steven C. Bennett, AUSA  
Charles M. Carberry, Esq.  
Judith A. Scott, Esq.  
Ronald Carey, General President  
Mr. Harold E. Burke  
Hon. William H. Webster  
Hon. William P. Barr

  
Delma Gama

Sworn to and subscribed  
before me this 6th day  
of November, 1992

  
JANET HARRIS  
A Notary Public of New Jersey  
My Commission Expires June 19, 1996



DEPARTMENT OF JUSTICE  
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: LACEY, FREDERICK B., ESQ., INDEPENDENT ADMINISTRATOR, NJ  
To: AG. ODD: NONE  
Date Received: 11-09-92 Date Due: NONE Control #: X92110916209  
Subject & Date  
10-26-92 LETTER REGARDING THE BANCA NAZIONALE DEL LAVORO  
(BNL) MATTER.

ORIGINAL NEVER REC'D IN EXEC. SEC. - LOGGED FROM COPY WHICH  
WAS ATTACHED TO E.S. 92110916193.

	Referred To:	Date:		Referred To:	Date:	
(1)	OAG;FILES	11-09-92	(5)			W/IN:
(2)			(6)			
(3)			(7)			PRTY:
(4)			(8)			1S
	INTERIM BY:			DATE:		OPR:
	Sig. For: AG.			Date Released: 11-09-92		CYN

Remarks

AG RESPONDED WITH LETTER DATED 10-27-92.  
(SEE EXEC. SEC. 92111316504.)  
01-28-93: ORIGINAL REC'D FROM OAG/LEVIN ON 01-19-93  
(SEE E.S. 93012800991) AND FORWARDED TO AG FILES. (MAU)

Other Remarks:

OLA CONTACT:

FILE: INDEPENDENT COUNSEL/LACEY, FREDERICK B., AG CHRON

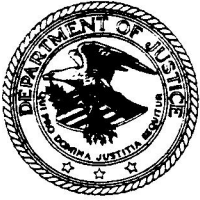
CROSS REFERENCES:

1. BANKING INDUSTRY/BNL

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY  
\*\*\*\*\*

2110  
26  
OCTOBER 92





Office of the Attorney General  
Washington, D. C. 20530

October 27, 1992

Judge Frederick B. Lacey  
LeBoeuf, Lamb, Leiby & MacRae  
One Gateway Center  
Newark, NJ 07102-5311

Banca Nazionale del Lavoro Matter

Dear Judge Lacey:

Pursuant to your appointment as Independent Counsel under 28 CFR Part 600, this letter will memorialize my request that you conduct a preliminary investigation, as defined in 28 USC 592, of matters related to the production of CIA documents and information concerning the Banca Nazionale del Lavoro (BNL) loans to or on behalf of Iraq, to the Department of Justice, the United States Attorney's Office in Atlanta, the United States District Court in Atlanta, and the United States Congress.

Although under 28 USC 592(a)(1) you have 90 days to complete a preliminary investigation, I ask that you report to me on the results of your preliminary investigation as soon as possible, and in no event later than December 8, 1992, so that should a determination be made that application to the court for appointment of an independent counsel pursuant to 28 USC 592 is warranted, such application can be made before expiration of the Independent Counsel Statute.

Sincerely,

William P. Barr  
Attorney General



# LEBOEUF, LAMB, LEIBY & MACRAE

A PARTNERSHIP HOLDING PROFESSIONAL CORPORATION

FREDERICK B. LACEY  
WILLIAM R. HOLZAPFEL  
LAWRENCE E. MILLER  
THEODORE D. ADEN  
THOMAS W. GRELISH 938-9911  
JOSEPH A. TATO  
WESLEY S. CALDWELL JR.  
CHARLES M. LIZZA  
DAVID S. TURETSKY  
JEANNETTE M. BOND  
RICHARD B. MCGLYNN  
STEPHEN B. GENZER  
REYNOLD NEBEL JR.  
RESIDENT NEW JERSEY PARTNERS  
  
COUNSEL:  
JOHN F. MACLEOD  
MARGARET M. FOTI

ONE GATEWAY CENTER  
NEWARK, NJ 07102-5311

201-643-8000

FACS FILES

5TH FLR) 201-622-6693

201-643-6111

17TH FLR) 201-643-0437

October 26, 1992

NEW YORK NY  
WASHINGTON DC  
ALBANY NY  
BOSTON MA  
HARRISBURG PA  
HARTFORD CT  
LOS ANGELES CA  
SALT LAKE CITY UT  
SAN FRANCISCO CA  
JACKSONVILLE FL  
RALEIGH NC  
LONDON, ENGLAND  
BRUSSELS, BELGIUM  
MOSCOW, RUSSIAN FEDERATION

The Honorable William P. Barr  
Attorney General of the United States  
United States Department of Justice  
Washington, D.C. 20530

Re: Banca Nazionale del Lavoro Matter

Dear Mr. Attorney General:

On October 16, 1992, you appointed me Independent Counsel under 28 CFR Part 600, in connection with the above-entitled matter. A copy of that letter is attached hereto as Exhibit A. Following my appointment, I commenced work immediately.

Included in the tasks you have asked me to perform is the following:

5. Supervise any applicable preliminary inquiries or preliminary investigations under the independent counsel statute, and advise . . . [you] as to whether to seek appointment of an independent counsel under the statute.

Thus, I shall now address that directive.

## The Congressional Letters

As of this date, you have before you, and have made available to me, three separate requests that you act under the Independent Counsel Statute, 28 U.S.C. §§591, et seq., to seek appointment of Independent Counsel by the division of the court established under 28 U.S.C. §49. These requests are included in the following letters:



Mr. Attorney General:  
October 26, 1992  
Page 2

1. Letter of October 14, 1992, from the Honorable David L. Boren, Chairman of the United States Senate Select Committee on Intelligence (the "Boren letter"). Exhibit B.
2. The United States House of Representatives Committee on the Judiciary's letter of October 15, 1992. Exhibit C.
3. The United States Senate Committee on the Judiciary's letter of October 19, 1992. Exhibit D.

The Independent Counsel Statute

Section 591 of 28 U.S.C. reads in pertinent part as follows:

(a) Preliminary investigation with respect to certain covered persons. The Attorney General shall conduct a preliminary investigation in accordance with section 592 [28 U.S.C. § 592] whenever the Attorney General receives information sufficient to constitute grounds to investigate whether any person described in subsection (b) may have violated any Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction.

(b) Persons to whom subsection (a) applies. The persons referred to in subsection (a) are-

\* \* \*

(4) any Assistant Attorney General and any individual working in the Department of Justice who is compensated at a rate of pay at or above level III of the Executive Schedule under section 5314 of title 5 [5 U.S.C. §5314];

(5) the Director of Central Intelligence, the Deputy Director of Central Intelligence, and the Commissioner of Internal Revenue;

\* \* \*



Mr. Attorney General:  
October 26, 1992  
Page 3

(c) Preliminary investigation with respect to persons not listed in subsection (b). The Attorney General may conduct a preliminary investigation in accordance with section 592 [28 U.S.C. §592] if--

(1) the Attorney General received information sufficient to constitute grounds to investigate whether any person other than a person described in subsection (b) may have violated any Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction; and

(2) the Attorney General determines that an investigation or prosecution of the person, with respect to the information received, by the Attorney General or other officer of the Department of Justice may result in a personal, financial, or political conflict of interest.

(d) Examination of information to determine need for preliminary investigation.

(1) Factors to be considered. In determining under subsection (a) or (c) (or section 592(c)(2) [28 U.S.C. §592(c)(2)]) whether grounds to investigate exist, the Attorney General shall consider only--

- (A) the specificity of the information received; and
- (B) the credibility of the source of the information.

(2) Time period for making determination. The Attorney General shall determine whether grounds to investigate exist not later than 15 days after the information is first received. If within that 15-day period the Attorney General determines that the information is



Mr. Attorney General:  
October 26, 1992  
Page 4

not specific or is not from a credible source, then the Attorney General shall close the matter. If within that 15-day period the Attorney General determines that the information is specific and from a credible source, the Attorney General shall, upon making that determination, commence a preliminary investigation with respect to that information. If the Attorney General is unable to determine, within that 15-day period, whether the information is specific and from a credible source, the Attorney General shall, at the end of that 15-day period, commence a preliminary investigation with respect to that information.

Pertinent too is section 592(g) of the Independent Counsel Statute. It provides, with respect to the letters from the Senate and House Judiciary Committees, that those bodies "may request in writing that the Attorney General apply for the appointment of an independent counsel" and that, not later than 30 days after receipt of such a request, the Attorney General "shall submit" to such body "a report on whether the Attorney General has begun or will begin a preliminary investigation . . . with respect to which the request is made. . . ."

#### Discussion

As to the letters from the Senate and House Judiciary Committees, it would appear that, under 28 U.S.C. §592, you have thirty days, or until November 18, and November 14, 1992, respectively, to determine whether a preliminary investigation is warranted as to the matters alleged by those bodies.

Section 592(g) is not applicable to Senator Boren's letter of October 14, because that letter is not from a Judiciary Committee or members thereof. Instead, the information in the Boren letter appears to trigger the response provision of section 591(d)(2); that is, fifteen days "after the information is first received," subject of course to consideration of the elements to be considered under that subdivision. Thus, a response to the Boren letter would be due on October 29.



Mr. Attorney General:  
October 26, 1992  
Page 5

As quoted above, section 591(d)(1) also states that in "determining . . . whether grounds to investigate exist, the Attorney General shall consider only -

- (A) the specificity of the information received; and
- (B) the credibility of the source of the information."

Applying these limited tests to Senator Boren's letter, I find them to be met.

Finally, I must consider whether the information the Department of Justice has received "is sufficient to constitute grounds to investigate whether any person . . . may have violated any Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction." 28 U.S.C. §591(a), (b) and (c).

Senator Boren's letter makes serious allegations against the Department of Justice and the Central Intelligence Agency relating to events occurring since August 10, 1992, the date of your Report to the Committee on the Judiciary of the House of Representatives. While Senator Boren cites to no specific statute, his allegations suggest he has in mind, among other statutes, 18 U.S.C. §1503. See also, the letter of October 19, 1992, from the Senate Judiciary Committee, at p. 1.

Item 1 of your letter appointing me provides:

1. Investigate all aspects of the production of CIA documents and information concerning the Banca Nazionale del Lavoro (BNL) loans to or on behalf of Iraq, to the Department of Justice, United States Attorney's Office in Atlanta, and the United States Congress. Your investigation should include, but not be limited to, the Department of Justice's role in that production of documents and information, and any statements by CIA or Department of Justice officials concerning said production.

Thus, since October 16, the day of my appointment, I have been investigating the same realm of facts covered by Senator Boren's allegations. Indeed, in the course of that investigation, at my request, Senator Boren has permitted me to review, on a non-disclosure basis, certain materials gathered by his Committee.

I am far from concluding that there has been a violation of any Federal statutes, even assuming the validity of all of the



Mr. Attorney General:  
October 26, 1992  
Page 6

information gathered to date by Senator Boren and me. Certainly, Senator Boren does not say so, nor do I. On the other hand, I must recommend to you that a preliminary investigation be undertaken pursuant to §591(a) and (c).

You will of course note that in making this recommendation, I do not distinguish between so-called "covered" persons referred to in §591(b), as to whom §591(a) states that you "shall" proceed, and persons not listed in subsection (b), as to whom you "may" conduct such a preliminary investigation. It is my recommendation that the preliminary investigation should concern all persons, "covered" or not, who may have been related in some way to the allegations in Senator Boren's letter and the matters referred to in your letter of appointment.

I must also bring to your attention the Opinion and Order (Exhibit E) of United States District Judge Marvin Shoob. As you know, Judge Shoob has presided over the BNL matter in the United States District Court for the Northern District of Georgia. On October 5, 1992, Judge Shoob entered an Order, with an Opinion, in which he made very serious charges against the United States and its prosecution of the indictment of Christopher Drogoul and others. No. 1:91-Cr. 078-MRS.

The proceedings before Judge Shoob were very extensive. Much of what he charges has already been addressed in your August 10, 1992, Report to the Committee on the Judiciary of the House of Representatives. See Report, pp. 11, 35, et seq. In any case, Judge Shoob's charges are characterized as "tentative conclusions" and deal almost exclusively with the prosecutorial strategy and decisions. Nothing is alleged that equates to a crime by Government officials. Instead, Judge Shoob, among other things, simply reflects his belief that the Government's theory of BNL-Rome's non-involvement in Drogoul's illegal activities was ill-founded.

Judge Shoob is also critical of the Central Intelligence Agency, Opinion at 12-13. Again, however, no crime is reflected in the allegations.

Finally, Judge Shoob "strongly recommends that an independent prosecutor be named to investigate this matter."

While I do not find that the Independent Counsel Statute is triggered by Judge Shoob's Opinion and Order, they should be carefully considered and, in keeping with my assigned responsibility to advise you as to "further inquiries that should be made," Item 8 of the Letter of Appointment, Exhibit A, I



Mr. Attorney General:  
October 26, 1992  
Page 7

strongly recommend that, to the extent you have not already done so, his Opinion and Order be the subject of further investigation.

Finally, I know you will be pleased to hear that I have received complete cooperation from the persons within the Department of Justice with whom I have had contact. Additionally, I have been assured of complete cooperation from Judge Sessions, Director of the Federal Bureau of Investigation, and Director Gates and Inspector General Hitz of the Central Intelligence Agency.

Very truly yours,

A handwritten signature in dark ink, appearing to be 'F. B. Lacey', written in a cursive style.

Frederick B. Lacey

FBL:abw



# LEBOEUF, LAMB, LEIBY & MACRAE

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

FREDERICK B. LACEY  
WILLIAM R. HOLZAPFEL  
LAWRENCE E. MILLER  
THEODORE D. ADEN  
THOMAS W. GREELISH (1939-1991)  
JOSEPH A. TATO  
WESLEY S. CALDWELL III  
CHARLES M. LIZZA  
DAVID S. TURETSKY  
JEANNETTE M. BOND  
RICHARD B. MCGLYNN  
STEPHEN B. GENZER  
REYNOLD NEBEL, JR.  
RESIDENT NEW JERSEY PARTNERS  
  
COUNSEL:  
JOHN F. MACLEOD  
MARGARET M. FOTI

ONE GATEWAY CENTER  
NEWARK, NJ 07102-5311

(201) 643-8000  
FACSIMILES:  
(6TH FLR) 201-622-6693  
201-643-6111  
(7TH FLR) 201-643-0437

October 26, 1992

NEW YORK, NY  
WASHINGTON, DC  
ALBANY, NY  
BOSTON, MA  
HARRISBURG, PA  
HARTFORD, CT  
LOS ANGELES, CA  
SALT LAKE CITY, UT  
SAN FRANCISCO, CA  
JACKSONVILLE, FL  
RALEIGH, NC  
LONDON, ENGLAND  
BRUSSELS, BELGIUM  
MOSCOW, RUSSIAN FEDERATION

The Honorable William P. Barr  
Attorney General of the United States  
United States Department of Justice  
Washington, D.C. 20530

Re: Banca Nazionale del Lavoro Matter

Dear Mr. Attorney General:

On October 16, 1992, you appointed me Independent Counsel under 28 CFR Part 600, in connection with the above-entitled matter. A copy of that letter is attached hereto as Exhibit A. Following my appointment, I commenced work immediately.

Included in the tasks you have asked me to perform is the following:

5. Supervise any applicable preliminary inquiries or preliminary investigations under the independent counsel statute, and advise . . . [you] as to whether to seek appointment of an independent counsel under the statute.

Thus, I shall now address that directive.

## The Congressional Letters

As of this date, you have before you, and have made available to me, three separate requests that you act under the Independent Counsel Statute, 28 U.S.C. §§591, et seq., to seek appointment of Independent Counsel by the division of the court established under 28 U.S.C. §49. These requests are included in the following letters:



Mr. Attorney General:  
October 26, 1992  
Page 2

1. Letter of October 14, 1992, from the Honorable David L. Boren, Chairman of the United States Senate Select Committee on Intelligence (the "Boren letter"). Exhibit B.
2. The United States House of Representatives Committee on the Judiciary's letter of October 15, 1992. Exhibit C.
3. The United States Senate Committee on the Judiciary's letter of October 19, 1992. Exhibit D.

The Independent Counsel Statute

Section 591 of 28 U.S.C. reads in pertinent part as follows:

**(a) Preliminary investigation with respect to certain covered persons.** The Attorney General shall conduct a preliminary investigation in accordance with section 592 [28 U.S.C. § 592] whenever the Attorney General receives information sufficient to constitute grounds to investigate whether any person described in subsection (b) may have violated any Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction.

**(b) Persons to whom subsection (a) applies.** The persons referred to in subsection (a) are-

-

\* \* \*

(4) any Assistant Attorney General and any individual working in the Department of Justice who is compensated at a rate of pay at or above level III of the Executive Schedule under section 5314 of title 5 [5 U.S.C. §5314];

(5) the Director of Central Intelligence, the Deputy Director of Central Intelligence, and the Commissioner of Internal Revenue;

\* \* \*



Mr. Attorney General:  
October 26, 1992  
Page 3

**(c) Preliminary investigation with respect to persons not listed in subsection (b).** The Attorney General may conduct a preliminary investigation in accordance with section 592 [28 U.S.C. §592] if--

(1) the Attorney General received information sufficient to constitute grounds to investigate whether any person other than a person described in subsection (b) may have violated any Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction; and

(2) the Attorney General determines that an investigation or prosecution of the person, with respect to the information received, by the Attorney General or other officer of the Department of Justice may result in a personal, financial, or political conflict of interest.

**(d) Examination of information to determine need for preliminary investigation.**

(1) Factors to be considered. In determining under subsection (a) or (c) (or section 592(c)(2) [28 U.S.C. §592(c)(2)]) whether grounds to investigate exist, the Attorney General shall consider only--

- (A) the specificity of the information received; and
- (B) the credibility of the source of the information.

(2) Time period for making determination. The Attorney General shall determine whether grounds to investigate exist not later than 15 days after the information is first received. If within that 15-day period the Attorney General determines that the information is



Mr. Attorney General:  
October 26, 1992  
Page 4

not specific or is not from a credible source, then the Attorney General shall close the matter. If within that 15-day period the Attorney General determines that the information is specific and from a credible source, the Attorney General shall, upon making that determination, commence a preliminary investigation with respect to that information. If the Attorney General is unable to determine, within that 15-day period, whether the information is specific and from a credible source, the Attorney General shall, at the end of that 15-day period, commence a preliminary investigation with respect to that information.

Pertinent too is section 592(g) of the Independent Counsel Statute. It provides, with respect to the letters from the Senate and House Judiciary Committees, that those bodies "may request in writing that the Attorney General apply for the appointment of an independent counsel" and that, not later than 30 days after receipt of such a request, the Attorney General "shall submit" to such body "a report on whether the Attorney General has begun or will begin a preliminary investigation . . . with respect to which the request is made. . . ."

#### Discussion

As to the letters from the Senate and House Judiciary Committees, it would appear that, under 28 U.S.C. §592, you have thirty days, or until November 18, and November 14, 1992, respectively, to determine whether a preliminary investigation is warranted as to the matters alleged by those bodies.

Section 592(g) is not applicable to Senator Boren's letter of October 14, because that letter is not from a Judiciary Committee or members thereof. Instead, the information in the Boren letter appears to trigger the response provision of section 591(d)(2); that is, fifteen days "after the information is first received," subject of course to consideration of the elements to be considered under that subdivision. Thus, a response to the Boren letter would be due on October 29.



Mr. Attorney General:  
October 26, 1992  
Page 5

As quoted above, section 591(d)(1) also states that in "determining . . . whether grounds to investigate exist, the Attorney General shall consider only -

- (A) the specificity of the information received; and
- (B) the credibility of the source of the information."

Applying these limited tests to Senator Boren's letter, I find them to be met.

Finally, I must consider whether the information the Department of Justice has received "is sufficient to constitute grounds to investigate whether any person . . . may have violated any Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction." 28 U.S.C. §591(a), (b) and (c).

Senator Boren's letter makes serious allegations against the Department of Justice and the Central Intelligence Agency relating to events occurring since August 10, 1992, the date of your Report to the Committee on the Judiciary of the House of Representatives. While Senator Boren cites to no specific statute, his allegations suggest he has in mind, among other statutes, 18 U.S.C. §1503. See also, the letter of October 19, 1992, from the Senate Judiciary Committee, at p. 1.

Item 1 of your letter appointing me provides:

1. Investigate all aspects of the production of CIA documents and information concerning the Banca Nazionale del Lavoro (BNL) loans to or on behalf of Iraq, to the Department of Justice, United States Attorney's Office in Atlanta, and the United States Congress. Your investigation should include, but not be limited to, the Department of Justice's role in that production of documents and information, and any statements by CIA or Department of Justice officials concerning said production.

Thus, since October 16, the day of my appointment, I have been investigating the same realm of facts covered by Senator Boren's allegations. Indeed, in the course of that investigation, at my request, Senator Boren has permitted me to review, on a non-disclosure basis, certain materials gathered by his Committee.

I am far from concluding that there has been a violation of any Federal statutes, even assuming the validity of all of the



Mr. Attorney General:  
October 26, 1992  
Page 6

information gathered to date by Senator Boren and me. Certainly, Senator Boren does not say so, nor do I. On the other hand, I must recommend to you that a preliminary investigation be undertaken pursuant to §591(a) and (c).

You will of course note that in making this recommendation, I do not distinguish between so-called "covered" persons referred to in §591(b), as to whom §591(a) states that you "shall" proceed, and persons not listed in subsection (b), as to whom you "may" conduct such a preliminary investigation. It is my recommendation that the preliminary investigation should concern all persons, "covered" or not, who may have been related in some way to the allegations in Senator Boren's letter and the matters referred to in your letter of appointment.

I must also bring to your attention the Opinion and Order (Exhibit E) of United States District Judge Marvin Shoob. As you know, Judge Shoob has presided over the BNL matter in the United States District Court for the Northern District of Georgia. On October 5, 1992, Judge Shoob entered an Order, with an Opinion, in which he made very serious charges against the United States and its prosecution of the indictment of Christopher Drogoul and others. No. 1:91-Cr. 078-MRS.

The proceedings before Judge Shoob were very extensive. Much of what he charges has already been addressed in your August 10, 1992, Report to the Committee on the Judiciary of the House of Representatives. See Report, pp. 11, 35, et seq. In any case, Judge Shoob's charges are characterized as "tentative conclusions" and deal almost exclusively with the prosecutorial strategy and decisions. Nothing is alleged that equates to a crime by Government officials. Instead, Judge Shoob, among other things, simply reflects his belief that the Government's theory of BNL-Rome's non-involvement in Drogoul's illegal activities was ill-founded.

Judge Shoob is also critical of the Central Intelligence Agency, Opinion at 12-13. Again, however, no crime is reflected in the allegations.

Finally, Judge Shoob "strongly recommends that an independent prosecutor be named to investigate this matter."

While I do not find that the Independent Counsel Statute is triggered by Judge Shoob's Opinion and Order, they should be carefully considered and, in keeping with my assigned responsibility to advise you as to "further inquiries that should be made," Item 8 of the Letter of Appointment, Exhibit A, I

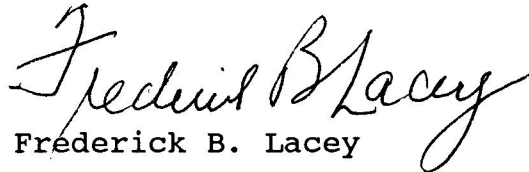


Mr. Attorney General:  
October 26, 1992  
Page 7

strongly recommend that, to the extent you have not already done so, his Opinion and Order be the subject of further investigation.

Finally, I know you will be pleased to hear that I have received complete cooperation from the persons within the Department of Justice with whom I have had contact. Additionally, I have been assured of complete cooperation from Judge Sessions, Director of the Federal Bureau of Investigation, and Director Gates and Inspector General Hitz of the Central Intelligence Agency.

Very truly yours,

A handwritten signature in black ink, reading "Frederick B. Lacey". The signature is written in a cursive, flowing style with a large initial 'F'.

Frederick B. Lacey

FBL:abw









Office of the Attorney General  
Washington, D. C. 20530

October 16, 1992

Judge Frederick B. Lacey  
LeBoeuf, Lamb, Leiby & MacRae  
520 Madison Avenue  
New York, New York 10022

Dear Judge Lacey:

This letter will confirm that I will appoint you as an Independent Counsel, pursuant to 28 CFR Part 600.

The tasks I have asked you to perform are as follows:

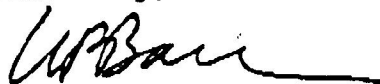
1. Investigate all aspects of the production of CIA documents and information concerning the Banca Nazionale del Lavoro (BNL) loans to or on behalf of Iraq, to the Department of Justice, United States Attorney's Office in Atlanta, the United States District Court in Atlanta, and the United States Congress. Your investigation should include, but not be limited to, the Department of Justice's role in that production of documents and information, and any statements by CIA or Department of Justice officials concerning said production.
2. Review the Department's entire handling of the BNL matter, and advise me as to any improprieties and any further inquiries that should be made.
3. Advise me on an ongoing basis concerning the conduct of the Department's continuing investigation and prosecution of all aspects of the BNL case. In this regard, I will be creating a task force to investigate and prosecute all ongoing aspects of the BNL matter. You are to have complete access to all the activities of that task force.
4. Advise me of any other areas which you feel should be reviewed based on any information that you learn from the above three tasks or from any other source.
5. Supervise any applicable preliminary inquiries or preliminary investigations under the independent counsel statute, and advise me as to whether to seek appointment of an independent counsel under the statute.
6. Ultimately, prepare reports for Congress and the public on what you have learned in the course of your review.



As the CFR regulation provides, and as we discussed, you are to have complete independence and the full power of the Attorney General in conducting this investigation and review; you may call upon any and all of the Department's resources or seek additional assistance from outside the Department; and the terms of your appointment prohibit your removal except for cause.

. Thank you for agreeing to take on this service to the Department and to the Nation.

Sincerely,



William P. Barr  
Attorney General







DAVID L. BOREN, OKLAHOMA, CHAIRMAN  
FRANK H. MURKOWSKI, ALASKA, VICE CHAIRMAN  
ERNEST F. HOLLINGS, SOUTH CAROLINA  
BILL BRADLEY, NEW JERSEY  
ALAN CRANSTON, CALIFORNIA  
DENNIS DECONCINI, ARIZONA  
HOWARD METZENBAUM, OHIO  
JOHN GLENN, OHIO  
J. ROBERT KERREY, NEBRASKA  
JOHN WARNER, VIRGINIA  
ALFONSE D'AMATO, NEW YORK  
JOHN C. DANFORTH, MISSOURI  
WARREN RUDMAN, NEW HAMPSHIRE  
SLADE GORTON, WASHINGTON  
JOHN H. CHAFEE, RHODE ISLAND

## United States Senate

SELECT COMMITTEE ON INTELLIGENCE  
WASHINGTON, DC 20510-8475

GEORGE J. MITCHELL, MAINE, EX OFFICIO  
ROBERT DOLE, KANSAS, EX OFFICIO

GEORGE J. TENET, STAFF DIRECTOR  
JOHN H. MOSEMAN, MINORITY STAFF DIRECTOR  
KATHLEEN P. MCGHEE, CHIEF CLERK

October 14, 1992

The Honorable William P. Barr  
Attorney General  
Department of Justice  
Washington, D.C. 20530

Dear Mr. Attorney General:

As a result of an ongoing investigation by the Senate Intelligence Committee and of other events, information has come to light in the last two weeks which I believe requires you to reconsider your previous refusal to appoint a special prosecutor on the Banca Nazionale del Lavoro/Iraq affair.

The Central Intelligence Agency (CIA) has admitted that with the "strong advice" of the Department of Justice it authored a misleading letter to the Acting U.S. Attorney in Atlanta, and that additional information pertinent to the Drogoul case has only recently been discovered. On October 5th, the presiding judge in the case, Judge Shoob, issued an unprecedented statement from the bench recounting a series of events which suggested to him that "decisions were made at the top levels of the United States Government and within the Intelligence Community to shape this case."

Both the Justice Department and the CIA have initiated internal investigations as a result of this new information. I am, however, deeply concerned that notwithstanding the expressed intentions of the Director of the Federal Bureau of Investigation and of the CIA Inspector General, it may not be possible for those agencies to independently determine why a federal judge -- and possibly federal prosecutors -- in Atlanta were provided incomplete and misleading information about the Drogoul case.

More generally, I believe an independent counsel is required to investigate (1) the United States Government's investigation and prosecution of the BNL-Atlanta case; and (2) the Executive branch's provision of information on BNL to the United States Congress.



The Honorable William P. Barr  
October 14, 1992  
Page Two

Mr. Drogoul is charged as the alleged mastermind of a scheme to make billions of dollars in unauthorized loans to Iraq. Allegations from many quarters have suggested that BNL headquarters in Rome knew about or even approved the scheme.

Judge Shoob concluded in an October 5 opinion that:

- \* "Information may have been withheld from local prosecutors seeking to investigate the case or used to steer the prosecution."
- \* "[P]rosecutors failed to investigate seriously whether BNL-Rome knew of defendant Drogoul's activities."
- \* "The government failed to produce and apparently made no effort to bring in any knowledgeable bank officials from Rome for the sentencing hearing."
- \* "High-level officials in the Justice Department and the State Department met with the Italian ambassador...[and] appeared to steer this case..."
- \* "The Justice Department canceled investigators' necessary trip to Italy and Turkey..."
- \* "The local prosecutor in this matter received...highly unusual telephone calls from the White House Office of Legal Counsel..."
- \* "The CIA continues to be uncooperative in attempts to discover information about its knowledge of or involvement in the funding of Iraq by BNL-Atlanta."

The Central Intelligence Agency has admitted that a September 17 letter it sent to the federal prosecutor in Atlanta was misleading. The letter was misleading because it suggested that CIA had only public information -- press reports -- suggesting that BNL-Rome knew of Mr. Drogoul's activities. In fact, CIA had a number of classified intelligence reports suggesting BNL-Rome's knowledge.



The Honorable William P. Barr  
October 14, 1992  
Page Three

The Central Intelligence Agency has also acknowledged that when it authorized the misleading public letter to the federal prosecutor it was following the "strong advice" of the Department of Justice.

A Justice Department official indicated that he told the CIA that the decision on whether to change the letter was the CIA's to make.

As officers of the court, Justice Department attorneys had an obligation to ensure that CIA's possession of relevant classified material was clearly portrayed to the prosecutor and the judge. Yet they did not do so.

As public officials, those at the Justice Department and the CIA also had an obligation to ensure that any letter released to the public was truthful. Yet this obligation was not met, and a misleading letter was released.

CIA made an attempt on September 18 to clarify the misleading information regarding BNL-Rome's knowledge. The public statement CIA proposed may not have been fully adequate, but making a public correction should have been pursued. Instead, Justice categorically rejected any effort to correct the record.

Documents -- including some extremely relevant documents -- continue to trickle out of CIA. Some documents were given to the Senate Intelligence Committee which were apparently not given to the prosecutors or the judge. Others were given to the Justice Department but were not provided to our Committee until last week.

Disputes between the Department of Justice and the CIA continue in the public domain. Although the Justice Department contends that CIA failed to provide key documents, in fact the evidence shows that the FBI, which is part of the Justice Department, received or was knowledgeable of nearly all of the key classified reports at the time they were originally issued.



The Honorable William P. Barr  
October 14, 1992  
Page Four

Certain of these documents clearly should have given rise to intensive questioning of Italian officials, questioning of CIA officials regarding the reliability of their reporting, and specific tasking by Justice to gather more information directly relevant to the trial. None of this appears to have occurred.

The timing of the leak of a Justice Department investigation against FBI Director Sessions for alleged ethical violations is also of great concern. While I am aware of no direct evidence suggesting these events are related, the fact that a Justice Department inquiry begun in June was leaked at this particular time to the media raises serious questions with regard to whether pressure is being brought to bear against the FBI, which might affect the independence of its own investigation.

All of these facts, taken together, warrant immediate reconsideration of your previous refusal to appoint a special prosecutor. A truly independent investigation is required to determine whether federal crimes were committed in the Government's handling of the BNL case.

It was on August 10 that you rejected the request of a majority of the House Judiciary Committee to appoint a special prosecutor. Most of the key events I have described relating to the misleading letter had not yet even occurred -- they occurred in September and October.

Moreover, crucial evidence that CIA withheld documents had not yet been brought to light when you acted.

These new developments cast earlier events addressed in your August 10 report in a new light and suggest that these events should be re-examined.

The CIA's admittedly misleading letter is itself proof that the Government had not put to rest the matters addressed in your report declining to appoint an independent counsel. The CIA letter was written because, three weeks after your decision not to seek a special prosecutor, the U.S. Attorney in Atlanta questioned numerous agencies of the federal government about their possible knowledge of and even their direct involvement in Mr. Drogoul's schemes.



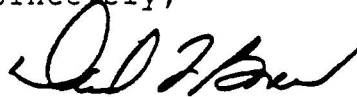
The Honorable William P. Barr  
October 14, 1992  
Page Five

Now that it is clear that an incomplete, misleading response was provided to the prosecutor by at least one agency questioned -- namely the CIA -- and that Justice, knowing the response was wrong, released it to Judge Shoob and the public, I do not believe investigations by the CIA, by Justice, or by the FBI are sufficient.

The special prosecutor law requires the Attorney General to conduct an investigation as to whether a special prosecutor is necessary whenever the Attorney General receives information sufficient to constitute grounds to investigate whether a high Government official has violated the law. The statute also authorizes the Attorney General to conduct such an investigation when lower-level officials are implicated and the Attorney General himself or another Justice Department official faces a personal, financial or political conflict of interest.

Based on the recent events and the new information that has come to light, there is now information sufficient to constitute grounds to investigate whether government officials broke the law and, accordingly, whether the federal court in Washington should be asked to appoint a special prosecutor. I request that you act promptly in this regard.

Sincerely,



David L. Boren  
Chairman







# MAJORITY MEMBERS

JACK BROOKS, TEXAS, CHAIRMAN  
 DON EDWARDS, CALIFORNIA  
 JOHN CONYERS, JR., MICHIGAN  
 ROYAL L. MAZZOLI, KENTUCKY  
 WILLIAM J. HUGHES, NEW JERSEY  
 MIKE SYNAR, OKLAHOMA  
 PATRICIA SCHROEDER, COLORADO  
 DAN GUCKMAN, KANSAS  
 BARNEY FRANK, MASSACHUSETTS  
 CHARLES E. SCHUMER, NEW YORK  
 EDWARD F. FEIGHAN, OHIO  
 HOWARD L. BERNAN, CALIFORNIA  
 RICK BOUCHER, VIRGINIA  
 HARLEY G. STAGGERS, JR., WEST VIRGINIA  
 JOHN BRYANT, TEXAS  
 MEL LEVINE, CALIFORNIA  
 GEORGE E. SANDMEISTER, ILLINOIS  
 CRAIG A. WASHINGTON, TEXAS  
 PETER HOAGLAND, NEBRASKA  
 MICHAEL J. KOPPEL, OREGON  
 JACE REED, RHODE ISLAND

ONE HUNDRED SECOND CONGRESS

## Congress of the United States

### House of Representatives

#### COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6218

October 15, 1992

# MINORITY MEMBERS

HAMILTON FISH, JR., NEW YORK  
 CARLOS J. MCCOY, CALIFORNIA  
 HENRY J. HYDE, ILLINOIS  
 J. JAMES SENSENBRENNER, JR., WISCONSIN  
 BILL MCCOLLUM, FLORIDA  
 GEORGE W. OOKA, PENNSYLVANIA  
 HOWARD COBLE, NORTH CAROLINA  
 LAMAR S. SMITH, TEXAS  
 CRAIG T. JAMES, FLORIDA  
 TOM CAMPBELL, CALIFORNIA  
 STEVEN SCHIFF, NEW MEXICO  
 JIM RAMSTAD, MINNESOTA  
 GEORGE ALLEN, VIRGINIA

MAJORITY-226-3351  
 MINORITY-126-8908

The Honorable William P. Barr  
 Attorney General  
 U.S. Department of Justice  
 Washington, D.C. 20530

Dear Mr. Attorney General:

As you are well aware, in recent days a number of U.S. Representatives and Senators have, on an individual basis, reiterated the formal request made by the House Judiciary Committee more than three months ago that you seek the appointment of an Independent Counsel to investigate possible criminal activities of high-ranking Department of Justice and Executive Branch officials in the BNL case. However, under the Ethics in Government Act, 28 U.S.C. § 592(g) (the "Act"), only a written request by the Judiciary Committee of either the House or Senate is legally sufficient to formally trigger a reevaluation of your August 10, 1992 refusal of this Committee's request. For this reason, and in light of information revealed recently which only heightens the concerns expressed three months ago, we, the undersigned, constituting a majority of the Majority Members of the House Committee on the Judiciary, write to formally request that you reconsider your refusal to seek appointment of an Independent Counsel in this matter.

For the record, it should be recalled that on July 9, 1992, a majority of the Majority Members of the House Committee on the Judiciary wrote pursuant to the Ethics in Government Act to formally request that you seek appointment of an Independent Counsel to investigate serious allegations of potential violations of Federal criminal statutes by high-ranking officials of the Executive Branch. The signatories had concluded that an Independent Counsel was required to investigate, inter alia, allegations of improprieties and possible criminal behavior of high-ranking DOJ officials (including "covered persons" under the Act) during the course of the prosecution of Christopher Drogoul regarding the Banca Nazionale del Lavoro matter. The letter specified aspects of that prosecution that the signatories believed required investigation by an Independent Counsel including, but not limited to, possible interference with line attorneys in the prosecution of the case and the delay or withholding of essential information from those Atlanta prosecutors. The circumstances involving this prosecution go to the heart of the broader issue of the Executive Branch policy of providing assistance to the regime of Saddam Hussein prior to August 1990 and the subsequent efforts by high-ranking officials to conceal that policy and obstruct Congressional and other investigations of that policy.



The Honorable William P. Barr  
October 15, 1992  
Page Two  
-----

By letter dated August 10, 1992, you refused to seek appointment of an Independent Counsel claiming there was "not a shred of evidence that any Department employee acted improperly" and no reason for an independent evaluation of potential illegality by other officials. In that letter, you invited Committee Members to renew the request if additional information became available or if it were shown that you failed to fully consider known information.

Both are the case. Despite your claims that no evidence of illegalities on the part of Department of Justice officials exists, it is now evident that misleading and incorrect information was provided to a Federal judge and local prosecutors in the BNL case. CIA officials have asserted that this was done with the knowledge -- and at the urging -- of high-ranking Justice Department officials, including "covered persons" under the Act. CIA officials also assert that when they tried to correct the record they were discouraged from doing so by the very same DOJ officials. The Department of Justice, for its part, denies the accusations and blames the CIA, thus creating the unseemly specter of disavowals and dissension between two Executive Branch agencies as to which is potentially criminally liable. The Committee's earlier allegations of irregularities and interference by high-ranking Executive Branch officials with the prosecution of the case -- so summarily dismissed by you in the August 10 letter -- have only been heightened by these recent disclosures.

It is beyond dispute that these allegations are extremely serious and demand a thorough and unbiased investigation. It is equally clear that the normal DOJ investigatory and prosecutive mechanisms are unable to conduct such an investigation and that an Independent Counsel is required. The Director of the FBI evidently agrees that the investigation of this matter should not be supervised by the very officials who are the subjects of the investigation. However, in the latest development, it was just revealed that the FBI Director will be investigating DOJ officials who are not only supervising his investigation, but also investigating the Director himself in another matter.

The American people demand to know whether the Department of Justice and the Central Intelligence Agency intentionally and knowingly withheld information and misled the court and the prosecutors in a criminal prosecution. The only way to ensure that this question is impartially and independently investigated is by the appointment of an Independent Counsel.





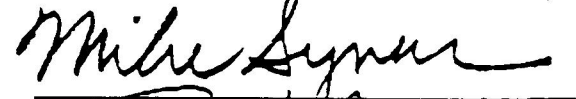

With criticism now mounting within the Executive as well as the Legislative Branch, it is inconceivable that you would continue to take the position expressed in your August 10 letter that the Committee's request for an Independent Counsel was somehow an "unjustified attack on the integrity of the Department...." Quite the contrary, it is the conflicted posture of the Department itself that is being perceived by the public as endangering the agency's "ability to advance justice." We call upon you to set aside your well known antipathy for the Ethics in Government Act, which is still the law of the land, and seek appointment of an Independent Counsel immediately.

Sincerely,

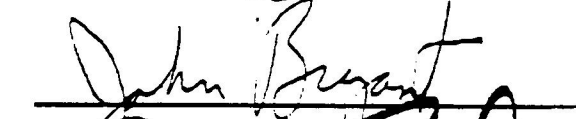
  
JACK BROOKS, Chairman

  
CHARLES E. SCHUMER

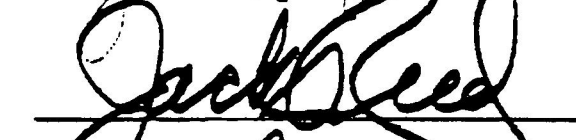
  


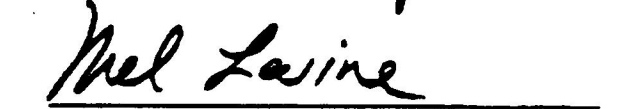
  




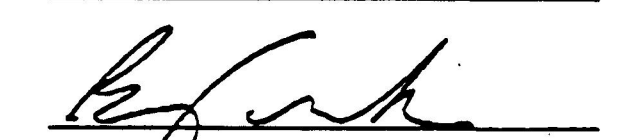


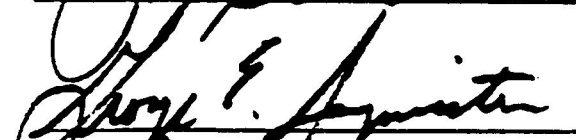


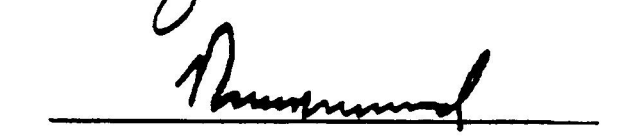






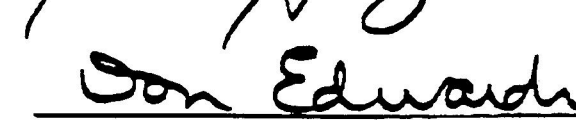


















JOSEPH R. BIDEN, JR., DELAWARE, CHAIRMAN

EDWARD M. KENNEDY, MASSACHUSETTS	STROM THURMOND, SOUTH CAROLINA
HOWARD M. METZENBAUM, OHIO	ORRIN G. HATCH, UTAH
DENNIS DECONCINI, ARIZONA	ALAN K. SIMPSON, WYOMING
PATRICK J. LEAHY, VERMONT	CHARLES E. GRASSLEY, IOWA
HOWELL HEFLIN, ALABAMA	ARLEN SPECTER, PENNSYLVANIA
PAUL SIMON, ILLINOIS	HANK BROWN, COLORADO
HERBERT KOHL, WISCONSIN	

RONALD A. KLAM, CHIEF COUNSEL  
 CYNTHIA C. HOGAN, STAFF DIRECTOR  
 THADDEUS E. STROM, MINORITY CHIEF COUNSEL  
 AND STAFF DIRECTOR

## United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-5275

October 19, 1992

The Honorable William P. Barr  
 Attorney General of the United States  
 Department of Justice  
 Washington, D.C. 20530

Dear General Barr:

Pursuant to the Independent Counsel provisions of the Ethics in Government Act, 28 U.S.C. §§ 591, *et seq.*, the undersigned, constituting a majority of majority party members of the Senate Committee on the Judiciary, request that you seek appointment of an Independent Counsel to investigate the possibility that high-ranking officials of the Department of Justice ("DOJ"), the Federal Bureau of Investigation ("FBI"), and the Central Intelligence Agency ("CIA") engaged in obstruction of justice with regard to the prosecution of Christopher P. Drogoul and may have violated other provisions of federal criminal law.

Mr. Drogoul is facing criminal charges in connection with loans made by the Atlanta branch office of Banca Nazionale del Lavoro ("BNL") to Iraq. In seeking the conviction of Mr. Drogoul, the government has alleged that he defrauded the parent bank, acting without its knowledge in making illegal loans.

The present request, made two months after you denied the House Judiciary Committee's first request for appointment of an Independent Counsel, is based in part on a series of events occurring over the last six weeks. This new evidence, set forth below, satisfies even your very stringent interpretation of the law's specificity standards set forth in your response to the House Judiciary Committee.

Testimony provided over the last two weeks to the Senate Select Committee on Intelligence supports the possibility that high-ranking Executive Branch officials have engaged in illegal activities by endeavoring "to influence, obstruct, or impede, the due administration of justice." (18 U.S.C. § 1503.) In particular, it appears that officials at DOJ and CIA engaged in conduct that resulted in misleading information being provided to the United States Attorney's Office and the United States District Court handling the Drogoul prosecution, and to the public.



The Honorable William P. Barr  
October 19, 1992  
Page 2

On September 17, 1992, the CIA sent a letter to the federal prosecutors in Atlanta, which purportedly "confirms information" previously provided by the CIA to the Department of Justice. The letter provided, in part, as follows:

"Question: "Does the CIA have any information that BNL-Rome was aware of the illegal activities engaged in by BNL-Atlanta.

Answer: CIA has publicly available information, acquired in the December, 1989 - January, 1990 time-frame, that BNL-Rome was aware of the illegal activities engaged in by BNL-Atlanta." (Emphasis added.)

In testimony before the Senate Intelligence Committee this month, the CIA General Counsel, Elizabeth Rindskopf, acknowledged that the letter was misleading and that the CIA possessed a number of classified intelligence reports based on non-public sources of information who believed or suggested that BNL-Rome officials knew of the criminal activities occurring at the bank's Atlanta branch office. This information, if made available to the prosecutors as it should have been, would have materially affected the conduct and outcome of the criminal case.

A senior CIA attorney then testified that the September 17th letter was sent to the Atlanta U.S. Attorney's Office after Lawrence A. Urgenson, Deputy Assistant Attorney General, Criminal Division, Department of Justice, strongly advised the CIA General Counsel's office not to correct the misstatements it contained. Further testimony revealed that, when the CIA drafted a follow-up letter to clarify the matter on September 18, 1992, Robert S. Mueller, Assistant Attorney General, Criminal Division, Department of Justice, refused to permit its release.

Additional evidence received by the Senate Intelligence Committee last week indicates that a number of classified internal CIA cables relevant to the case were never made available to either the prosecutors in Atlanta or the court, despite inquiries made to the CIA by the prosecutors early in their investigation. Some of these cables, while never officially disseminated by CIA headquarters, were contemporaneously made known to the FBI in Rome. Other key CIA cables suggesting that BNL-Rome was aware of Mr. Drogoul's activities were contemporaneously disseminated to FBI headquarters.



The Honorable William P. Barr  
October 19, 1992  
Page 3

Thus, at the time the Department alleged that Mr. Drogoul acted without the knowledge of BNL-Rome, it was aware of intelligence reports suggesting the contrary. This information apparently did not surface during the review undertaken by the Department following the first request for appointment of an Independent Counsel made by the House Judiciary Committee.

These facts raise anew the question of whether Executive Branch officials may have obstructed justice to avoid revealing the full extent of BNL-Rome's knowledge of illegal loan activity by the bank's Atlanta branch. Obstruction of justice by influencing a judicial officer is a serious crime punishable by up to five years in prison.

Two specific provisions of the Independent Counsel law now appear to have been triggered:

First, Mr. Mueller, as well as any superiors at the Justice Department with whom he discussed this matter, are "covered persons" under the Independent Counsel law. 28 U.S.C. § 591(b)(4). As you know, 28 U.S.C. § 591(a) mandates a preliminary investigation where sufficient grounds exist to investigate whether an Assistant Attorney General may have violated federal criminal law.

Second, where "non-covered persons" are concerned, the discretionary provisions of the Independent Counsel law apply. The Attorney General may conduct a preliminary investigation where sufficient grounds exist to investigate the possible violation of federal criminal law, and where an investigation by the Attorney General or other officer of the Department may result in a "personal, financial, or political conflict of interest." 28 U.S.C. § 591(c). The facts raising the possibility of illegal conduct sufficient to require an investigation are set forth above; we set forth the facts evidencing a conflict of interest below.

The testimony of high-level CIA and Department of Justice officials is in direct conflict. The public exchange of charges and denials makes the outcome of any internal investigation suspect. In addition, the Department of Justice and the FBI have engaged in a public dispute over the handling of the internal investigation of DOJ, and the timing of the public disclosure of a criminal investigation by DOJ of the Director of the FBI further clouds the air. Under these circumstances, we believe it is impossible for the Department to review this matter without personal and political conflicts of interest.



The Honorable William P. Barr  
October 19, 1992  
Page 4

Finally, certain of the statements contained in your response to the House Judiciary Committee's first request for an Independent Counsel are directly at odds with the evidence that has come to light in the past month and a half. Your conclusion that the Justice Department acted "to strengthen and expand the case, not delay or limit it," is now contradicted both by evidence available to the Department at the time of your review and by newly obtained testimony.

Other irregularities in the government's handling of the Drogoul prosecution, outlined in the October 5, 1992, order of Judge Shoob, support the need for an Independent Counsel to investigate this entire affair.

For these reasons, we strongly believe that the usual avenues of Justice Department internal investigation, including your appointment of Judge Frederick Lacey as the Department's special investigator, are inadequate. The Independent Counsel statute was enacted precisely to address the type of situation that exists here. No investigation conducted by the Department or its designee will accomplish the goal of restoring public confidence in the handling of the BNL investigation.

This goal -- restoring public confidence -- is the overarching objective of the Independent Counsel statute. Self-imposed measures adopted by the Executive Branch cannot substitute for the law that requires appointment of an Independent Counsel to police government abuses.

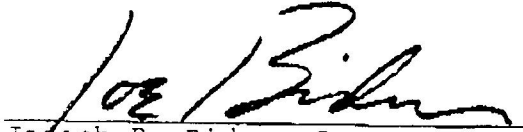
We believe that you should seek appointment of an Independent Counsel to investigate the possible obstruction of justice that may have occurred by officials of the Justice Department, FBI, and CIA. We request that you ask the court appointing the Independent Counsel to include within the counsel's jurisdiction the activities of all high-ranking Executive Branch officials who may have been involved in any illegality concerning the handling of the BNL prosecution or related matters.

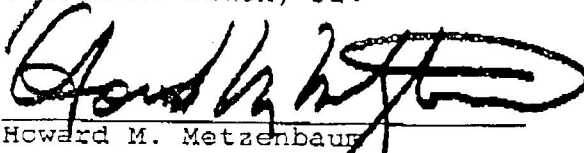
We urge your prompt consideration of our request.

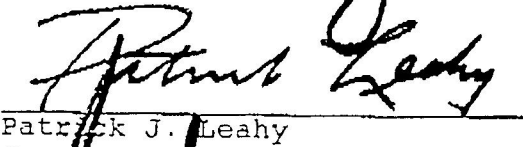


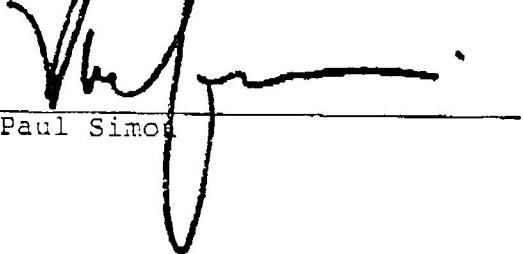
The Honorable William P. Barr  
October 19, 1992  
Page 5

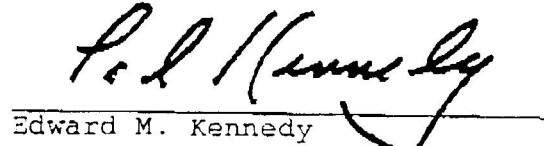
Sincerely,

  
Joseph R. Biden, Jr.

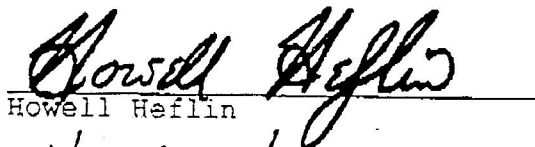
  
Howard M. Metzenbaum

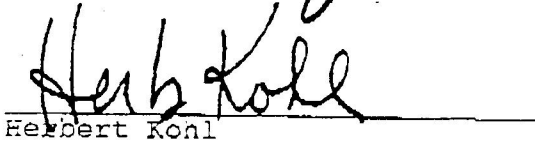
  
Patrick J. Leahy

  
Paul Simon

  
Edward M. Kennedy

  
Dennis DeConcini

  
Howell Heflin

  
Herbert Kohl







UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHRISTOPHER P. DROGOUL,

Defendant

CRIMINAL ACTION

1:91-cr-078-MHS

ORDER

This case involves billions of dollars raised and loaned in international finance. It involves allegations of an international bank fraud that may have helped pay for Iraq's military build-up. But the more important issue before this Court involves a man's liberty and serious questions about the integrity of our justice system and the almost unreviewable powers of prosecutorial discretion. The Court's judgment and decisions throughout the hearings and motions before it have been guided by its belief that there is a moral component to the Court's involvement in this case -- the responsibility to do the right thing.

This order will set forth the reasons the Court will grant the Government's motion to recuse and why the Court, on October 1, 1992, orally granted defendant Christopher P. Drogoul's renewed motion to withdraw his guilty plea.



## **I. BACKGROUND OF THE CASE**

For almost three weeks, the Court has heard evidence relating to the sentencing of Mr. Drogoul who entered a guilty plea to 60 counts of a 347-count indictment on June 2, 1992, and faced a life sentence. The indictment centers on charges that Mr. Drogoul, the manager of the Atlanta branch of one of Italy's largest banks, defrauded the parent bank ("BNL") by making some \$2 billion in unauthorized loans to Iraq and other countries. A number of these loans were backed by the Department of Agriculture's Commodity Credit Corporation ("CCC"). The indictment also includes charges of tax evasion, making false reports to government agencies and money laundering. Mr. Drogoul is the highest ranking BNL official indicted and the focus of the Government's prosecution.

Mr. Drogoul entered his guilty plea during a three-hour hearing before this Court, following an unusual sequence of events. In the week or so before the plea hearing, Mr. Drogoul announced his intention to plead guilty to all 347 counts of the indictment and to make a full statement about the case. Several days before the plea hearing, however, he agreed to a surprising offer from the Government to plead to only 60 counts and delayed making any meaningful statement. His sentencing hearing began September 14, 1992.



The Government has said that this hearing was highly unusual, more of a mini-trial than a sentencing hearing. The Court agrees that this hearing was unusual, but this has been an unusual case. The Government initially sought the "mini-trial;" at one point before the plea bargain, prosecutors requested three weeks to present evidence rebutting defendant's anticipated statement at the plea hearing. Following the plea bargain, which was initiated by the Government, the Government sought three days to present witnesses. During the sentencing hearing, the Government proceeded to present detailed evidence as to how the money flowed from one account to another, how much money defendant had promised to Iraq and other nations, and how defendant and alleged co-conspirators covered up these transactions.

The Court has never intended to "put the Government on trial," as suggested by the prosecution but only to determine what transpired and Mr. Drogoul's involvement. The Court also points out that a sentencing hearing is not a trial, and the rules of evidence do not apply. Courts are permitted to rely on hearsay and even on the testimony of confidential informants without knowing their identity. In a sense, evidence at a sentencing hearing is not subject to the same testing as that put on at a trial; the Court simply must satisfy itself that the information is "sufficiently



reliable."

## II. PLEA WITHDRAWAL

On September 21, 1992, after one week of evidence in the hearing, the Court denied defendant's motion to withdraw his plea of guilty. The Court held that defendant had not shown that there was a "fair and just reason" to permit the withdrawal of his guilty plea. September 21, 1992, Order. However, after daily revelations undermining the Government's case, the prosecution announced on October 1 that it no longer opposed defendant's motion to withdraw his guilty plea. Defendant renewed his motion to withdraw the plea.

In the two weeks of testimony following defendant's first attempt to withdraw his plea, defendant presented credible evidence suggesting that the Government had not fully investigated whether defendant's superiors in the bank approved of and were aware of his activities. The Government also furnished to the Court classified documents from the Central Intelligence Agency ("CIA") suggesting that BNL-Rome was aware of Mr. Drogoul's activities and was not a victim of the alleged fraud. Furthermore, defendant named several BNL superiors who knew of his activities and described their involvement. Defendant did not resolve the



questions about why he, a clearly intelligent person represented by counsel, entered his plea of guilty on June 2, 1992, and during a three-hour hearing before this Court testified only that his superiors should have known. However, other evidence presented at the sentencing hearing as outlined below raised such serious questions that the Court concluded that these issues could not appropriately be taken up on a motion for downward departure but should be heard at trial. In light of these conclusions and the Government's and defendant's request for a trial, the Court granted the motion to withdraw the plea.

### III. RECUSAL

The Government has filed a written motion requesting recusal, and the Court will grant the motion. A judge should disqualify himself from "any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). Although the Court believes that it would be able to hear the evidence with an open mind, the Government's concerns that it would not act impartially counsel against this Court remaining on the case. From the evidence presented during the hearing, this Court has reached and voiced certain preliminary conclusions and concerns about this case and the Government's conduct in investigating and prosecuting defendant that may, from the prosecution's



viewpoint, interfere with this Court's ability to hear evidence with an open and impartial mind. Furthermore, while some of the concerns raised by this Court may have legitimate explanations, the sheer number of unusual circumstances led this Court to reach these tentative conclusions. Accordingly, the Court will set forth some of the tentative conclusions it has reached in hearing this matter and its reasoning in arriving at those conclusions. Set forth below are the bases for the granting of the motions to withdraw the plea and to recuse.

A. The knowledge of officials at BNL-Rome

The Court concludes that officials at BNL-Rome were aware of and approved Mr. Drogoul's activities. At the very least, BNL-Rome chose to ignore what were obvious signs of Mr. Drogoul's extraordinary relationship with Iraq and his unusual lending practices. In support of this conclusion, the Court notes:

- 1) Classified reports from the CIA conclude, in part, that a number of high-level BNL-Rome officials supported Mr. Drogoul's activities.<sup>1</sup>

---

<sup>1</sup> The Court will not reveal the contents of these documents because they remain classified. However, as the Court will discuss below, the Court is unable to see how they relate to national security and why they should remain secret from defense counsel and the public.



2) A senior BNL official, Mr. Monaco, referred an Italian company seeking financing for a major construction project in Iraq to BNL-Atlanta.

3) The former head of BNL's North American operations, Dr. Luigi Sardelli, provided credible testimony showing that senior officials in Rome approved or had knowledge of Mr. Drogoul's activities.

- \* Sardelli's letter criticizing defendant's activities was never delivered by the auditor to officials in Rome.

- \* Instead of auditing or investigating BNL-Atlanta, BNL-Rome officials elected to investigate Dr. Sardelli who appears to be the only "straight shooter" in the organization.

- \* BNL-Rome was an extremely political organization operating more as an agency of the Italian government than as a bank.

- \* Dr. Sardelli voiced his frustration with BNL-Rome in testifying that the BNL-Rome officials sent to the United States to investigate the Atlanta branch after the raid were the officials who should have been investigated.

- \* Dr. Sardelli testified that he believes officials at BNL-Rome knew of Mr. Drogoul's activities.

4) There is evidence that documents may have been shredded by BNL officials shortly after the raid and that some files and documents are missing.



5) BNL branches in Germany, England and Canada were aware of BNL-Atlanta's substantial financing of Iraqi purchases and projects.

6) The Government's witnesses from Morgan Guaranty and the Bank of New York and confidential CIA reports concluded that it was well-known in international banking circles that BNL-Atlanta provided substantial financing for Iraq's purchase of agricultural, military and non-military products.

7) The Italian parliament's extensive report on the "BNL scandal" concludes that Mr. Drogoul was not a "lone wolf" and that BNL-Rome's failure to adequately supervise the Atlanta branch permitted the continued illegal activity.

8) Mr. Drogoul's co-defendant Paul Von Wedel and Jean Ivey, a BNL-Atlanta employee who was granted immunity, testified that they believed that officials in Rome were aware of BNL-Atlanta's involvement with Iraq -- testimony the Court found credible. Mr. Von Wedel also testified that Mr. Drogoul had regular access to Dr. Giacomo Pedde, the director general of BNL, that Mr. Drogoul met with Mr. Monaco, a senior BNL official, in Baghdad, and that Mr. Florio, another senior BNL official, verbally approved early CCC loans to Iraq.

9) Mr. Drogoul's first attorney, Theodore Lackland, testified credibly that several individuals involved with



the allegedly fraudulent transactions told him that officials in Rome were aware of the transaction and in fact had in their possession one of the allegedly fraudulent loan agreements (MTL-4).

10) As the "victim" in this matter, BNL-Rome may be able to recover \$1-2 billion in unpaid CCC-backed loans to the Iraqis.

11) When notified of the August 4, 1990, raid, Mr. Drogoul returned immediately to the United States, leaving his family in France. He met with BNL officials in New York, was furnished an attorney who was to be paid by the bank, and continued as manager of the Atlanta branch for a week.

12) Mr. Drogoul's chief mentor at BNL in 1986-87 retired from BNL in 1987 and became a consultant at Entrade, a defendant in this case and a participant in the scheme.

#### B. The Investigation and Prosecution of Mr. Drogoul

The Court has also come to a number of preliminary conclusions about the Government's investigation of this case. Primarily, the Court concludes that prosecutors failed to investigate seriously whether BNL-Rome knew of defendant Drogoul's activities. This failure, coupled with or provoked by the involvement of other departments of the United States Government, indicates an effort to absolve



BNL-Rome of complicity in the Atlanta branch loans to Iraq.  
The Court notes:

1) High-level officials in the Justice Department and the State Department met with the Italian ambassador to discuss the case. They appeared to help steer this case and gave support to BNL-Rome's position that it was a victim in this matter, assuring the ambassador that there "would be no surprises" for the Italians.

2) The Justice Department cancelled investigators' necessary trip to Italy and Turkey, where they intended to interview bank officials and others with knowledge of the transactions and scheme.

3) The Italian ambassador met with then-Attorney General Richard Thornburgh in Spring 1990 and told him that incriminating BNL-Rome in these transactions would be tantamount to "a slap in the face" of the Italians and would not be understood by the government of Italy.

4) The local prosecutor in this matter received one or more highly unusual and inappropriate telephone calls from the White House Office of Legal Counsel about this case, indicating the potential embarrassment level of the case.

5) The draft indictment was delayed by the Justice Department from early 1990 until the end of the Gulf War, February 1991 -- almost one year. Also, the plea bargain in which Mr. Drogoul agreed to plead guilty to only 60 counts



rather than 347 and initiated by an assistant prosecutor when the chief prosecutor was out of the city effectively silenced Mr. Drogoul who had announced his intention to make a full disclosure at the plea hearing.

6) The Government failed to produce and, apparently, made no effort to bring in any knowledgeable bank officials from Rome -- including Pedde, Guadagnini, Monaco, Florio -- for the sentencing hearing.

7) The Government failed to interview Waral Dajani, despite evidence of his substantial involvement with the scheme, when he was in Atlanta and had agreed to meet with the prosecution. Mr. Dajani, who has ties to the King of Jordan, was not indicted.

8) Investigators were blocked by the Department of Agriculture from interviewing Iraqi officials who were in the United States negotiating CCC guaranties and later were prohibited from travelling to Iraq to interview potential co-conspirators and witnesses.

9) In early 1990, Atlanta prosecutors met with BNL-Rome lawyers, discussing the bank's position as a victim.

10) The American Ambassador to Italy notified the Secretary of State, Justice Department and others in the Fall 1989 that BNL's management was worried about the prosecution of the case and wanted it raised "to a political level" and to achieve "damage control."



11) Matrix Churchill, an Iraqi front company that was a clearinghouse for weapons procurement, was not indicted, although one of its officers was.

12) The Government has provided no credible explanation for its failure to indict Wafai Dajani, Matrix Churchill, Enka, and the Central Bank of Iraq.

### C. Intelligence agencies

The Court also tentatively concluded during the course of the hearings that it is likely that the United States intelligence agencies were aware of BNL-Atlanta's relationship with Iraq. For example:

1) The Central Intelligence Agency did not respond to repeated requests from the Court concerning CIA knowledge of and involvement in the activities of the Atlanta branch. The agency's earlier response to the carefully crafted September 1, 1992, request from the Acting United States Attorney was evasive and concerned only knowledge of and involvement in unauthorized funding. The CIA continues to be uncooperative in attempts to discover information about its knowledge of or involvement in the funding of Iraq by BNL-Atlanta.

2) The raw intelligence reports indicate an awareness of extensive funding of Iraq by BNL-Atlanta.

3) There was no explanation as to the intelligence



community's awareness or lack of awareness of ENL-Atlanta's role in funding the Iraqi military build-up despite extensive cable traffic between Baghdad and Atlanta and several trips to Baghdad by Drogoul, including one to an Iraqi military fair attended by U.S. officials, such as the U.S. Ambassador.

#### D. Classified Information

The Court is also concerned that the local prosecutors lacked access to classified information which may have provided evidence on important elements of this case. The September 17, 1992, letter from the CIA to the local prosecutors shows that the CIA was not forthcoming with information it may have about the transactions at issue in this case -- the one area of classified information made available to the Court supports Mr. Drogoul's contention that his superiors approved of his activities. While the Court is well aware that there may be classified information in support of the Government's theory of this case, the Court is concerned that the prosecutors may have been blocked by agencies with political agendas from developing a full picture of this affair. This is particularly troubling in light of the fact that this information no longer seems relevant to national security and that, even if it is, there are procedures through which the CIA, and other agencies,



can make classified information available without revealing sources and methods.

#### IV. CONCLUSION

These are grave questions as to how the prosecutors made their decisions in this case -- both as to the nature of the charges and whom to prosecute. It is apparent that decisions were made at the top levels of the United States Justice Department, State Department, Agriculture Department and within the intelligence community to shape this case and that information may have been withheld from local prosecutors seeking to investigate the case or used to steer the prosecution. Furthermore, the Attorney General's exceptional refusal to grant the Congressional request for an independent counsel in itself raises concerns for the Court about the Government's impartiality in handling this case.

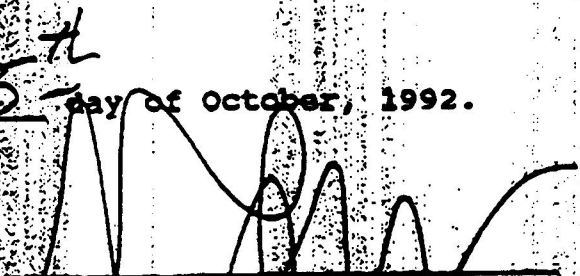
Accordingly, this Court again strongly recommends that an independent prosecutor be named to investigate this matter. The Court also recommends that the trial of Mr. Drogoul and the sentencing of the other defendants in this case be postponed to enable the United States Government to



employ its full resources to obtain all the facts rather than to continue with the prosecution's acceptance of BNL-Rome's version that BNL is a victim to avoid embarrassing a foreign government or to contain criticism of a failed foreign policy. The naming of an independent prosecutor in this matter would be an appropriate response to the 1990 Federal Reserve memorandum, commenting that the Iraqis are willing to sacrifice one individual to the vagaries of the United States criminal justice system.

The Court GRANTS defendant's motion to withdraw his plea of guilty and GRANTS the Government's motion to recuse.

IT IS SO ORDERED, this <sup>5<sup>th</sup></sup> 5 day of October, 1992.



Marvin H. Shoob, Senior Judge  
United States District Court  
Northern District of Georgia



DEPARTMENT OF JUSTICE  
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: BARR, WILLIAM P., ATTORNEY GENERAL  
To: LACEY, JUDGE FREDERICK B., NEW YORK  
Date Received: 02-10-93 Date Due: NONE  
Subject & Date  
10-16-92 LETTER CONFIRMING THAT THE AG WILL APPOINT  
JUDGE LACEY AS AN INDEPENDENT COUNSEL, PURSUANT TO  
28 CFR PART 600, IN THE BANCA NAZIONALE del LAVORO (BNL)  
MATTER. LISTS THE TASKS THE JUDGE HAS BEEN ASKED TO  
PERFORM.

ODD: NONE

Control #: X92123118400

	Referred To:	Date:		Referred To:	Date:	
(1)	OAG;FILES	02-10-93	(5)			W/IN:
(2)			(6)			
(3)			(7)			PRTY:
(4)			(8)			1Y
	INTERIM BY:			DATE:		OPR:
	Sig. For: AG.			Date Released:		HBR

Remarks

COPY OF LETTER WAS NOT PROVIDED EXEC. SEC. AT THE TIME  
IT WAS WRITTEN. A COPY WAS LATER FOUND WITH THE BNL  
REPORT AND CONTROLLED FOR RECORD PURPOSES.

Other Remarks:

OLA CONTACT:

FILE: INDEPENDENT COUNSEL/LACEY, FREDERICK B, AG CHRON

CROSS REFERENCES:

1. BANKING INDUSTRY/BNL

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY  
\*\*\*\*\*

15 OCT 16 1992





Office of the Attorney General  
Washington, D. C. 20530

October 16, 1992

Judge Frederick B. Lacey  
LeBoeuf, Lamb, Leiby & MacRae  
520 Madison Avenue  
New York, New York 10022

Dear Judge Lacey:

This letter will confirm that I will appoint you as an Independent Counsel, pursuant to 28 CFR Part 600.

The tasks I have asked you to perform are as follows:

1. Investigate all aspects of the production of CIA documents and information concerning the Banca Nazionale del Lavoro (BNL) loans to or on behalf of Iraq, to the Department of Justice, United States Attorney's Office in Atlanta, the United States District Court in Atlanta, and the United States Congress. Your investigation should include, but not be limited to, the Department of Justice's role in that production of documents and information, and any statements by CIA or Department of Justice officials concerning said production.
2. Review the Department's entire handling of the BNL matter, and advise me as to any improprieties and any further inquiries that should be made.
3. Advise me on an ongoing basis concerning the conduct of the Department's continuing investigation and prosecution of all aspects of the BNL case. In this regard, I will be creating a task force to investigate and prosecute all ongoing aspects of the BNL matter. You are to have complete access to all the activities of that task force.
4. Advise me of any other areas which you feel should be reviewed based on any information that you learn from the above three tasks or from any other source.
5. Supervise any applicable preliminary inquiries or preliminary investigations under the independent counsel statute, and advise me as to whether to seek appointment of an independent counsel under the statute.
6. Ultimately, prepare reports for Congress and the public on what you have learned in the course of your review.



As the CFR regulation provides, and as we discussed, you are to have complete independence and the full power of the Attorney General in conducting this investigation and review; you may call upon any and all of the Department's resources or seek additional assistance from outside the Department; and the terms of your appointment prohibit your removal except for cause.

Thank you for agreeing to take on this service to the Department and to the Nation.

Sincerely,

A handwritten signature in black ink, appearing to read 'W Barr', with a long horizontal flourish extending to the right.

William P. Barr  
Attorney General



Screened by NARA (RD-F) 02-04-2019  
FOIA # 60048 (URTS 16457) DOCID:  
70106670

1992

INDEPENDENT COUNSEL  
Walsh, Lawrence E



DEPARTMENT OF JUSTICE  
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: DOLE, SENATOR BOB AND THURMOND, SENATOR STROM  
To: AG. ODD: 12-08-92  
Date Received: 11-23-92 Date Due: 12-16-92 Control #: X921123168959

Subject & Date  
11-20-92 LETTER (FAX COPY REC'D FROM OAG) FROM THE  
REPUBLICAN LEADER AND THE RANKING MINORITY MEMBER, SENATE  
JUDICIARY COMMITTEE, LISTING CERTAIN FEDERAL CRIMINAL  
STATUTES FOR CONSIDERATION, IN CONNECTION WITH THE DEPT'S  
REVIEW OF THE POSSIBLE OCCURRENCE OF ANY ILLEGAL, IMPROPER,  
OR UNETHICAL ACTIVITIES WITHIN THE OFFICE OF INDEPENDENT  
COUNSEL LAWRENCE WALSH IN BRINGING AN INDICTMENT AGAINST  
CASPAR WEINBERGER ON OCTOBER 30, 1992. THE MEMBERS STATE\*\*

Referred To:	Date:	Referred To:	Date:	
(1) OAG;	12-09-92	(5)		W/IN:
(2)		(6)		
(3)		(7)		PRTY:
(4)		(8)		1S
INTERIM BY:		DATE:		OPR:
Sig. For: AG.		Date Released: 12-14-92		MLH

Remarks

(1) W/MEMO FROM CRM TO AG DATED 12-07-92 SUBMITTING A  
PREPARED RESPONSE FOR AG SIGNATURE. CC PROVIDED TO DAG.  
(PER CRM, OAG LEVIN REQUESTED THIS PACKAGE ASAP) KGM  
12-14-92 AG SIGNED LETTER DATED 12-14-92 BY OAG. ORIGINAL  
WAS DISPATCHED BY EXEC. SEC. HINES VIA OLA MESSENGER ON  
12-14-92. CC TO CRM, LEGIS FILES & OLA. (LETTER ALSO  
CLOSES OUT EXEC. SEC. 92111216379 & 92111216367.) TJ

Other Remarks:

OLA CONTACT:

FILE: INDEPENDENT COUNSEL/WALSH, LAWRENCE E., AG CHRON

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY  
\*\*\*\*\*

20 November 92



DEPARTMENT OF JUSTICE  
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: DOLE, SENATOR BOB AND THURMOND, SENATOR STROM  
To: AG. ODD: 12-08-92  
Date Received: 11-23-92 Date Due: 12-16-92 Control #: X92112316895  
Subject & Date  
11-20-92 LETTER (FAX COPY REC'D FROM OAG) FROM THE  
REPUBLICAN LEADER AND THE RANKING MINORITY MEMBER, SENATE  
JUDICIARY COMMITTEE, LISTING CERTAIN FEDERAL CRIMINAL  
STATUTES FOR CONSIDERATION, IN CONNECTION WITH THE DEPT'S  
REVIEW OF THE POSSIBLE OCCURRENCE OF ANY ILLEGAL, IMPROPER,  
OR UNETHICAL ACTIVITIES WITHIN THE OFFICE OF INDEPENDENT  
COUNSEL LAWRENCE WALSH IN BRINGING AN INDICTMENT AGAINST  
CASPAR WEINBERGER ON OCTOBER 30, 1992. THE MEMBERS STATE\*\*  
Referred To: Date: Referred To: Date:  
(1) CRM;MUELLER 11-23-92 (5) W/IN:  
(2) OAG; 12-09-92 (6)  
(3) (7) PRTY:  
(4) (8) OAG; 12-09-92 1S  
INTERIM BY: DATE: OPR:  
Sig. For: AG. Date Released: SEE "9" MLH

Remarks

\*\* THAT THIS LIST IS NOT INTENDED TO BE EXCLUSIVE AND  
REFLECTS CERTAIN MATTERS WHICH THEY BELIEVE SHOULD BE  
REVIEWED AND ADDRESSED BY THE DEPARTMENT.  
(SEE E.S. 92111216367, 92111216370, 92111216374 &  
92111216379 - COPY OF CONTROL SHEETS ATTACHED.)  
INFO CC: OAG, OAG (STEVENS), DAG, ASG, OLA (BURTON).  
(1) PREPARE RESPONSE FOR AG SIGNATURE AND RETURN TO

Other Remarks:

EXEC. SEC., WITH COPY OF INCOMING, FOR FURTHER COORDINATION.  
11-23-92: ORIG. REC'D AND SENT TO AG FILES. (MLH)  
(2) W/MEMO FROM CRM TO THE AG DATED 12-07-92 SUBMITTING A  
PREPARED RESPONSE FOR AG SIGNATURE. CC PROVIDED TO DAG.  
(PER CRM, OAG/LEVIN REQUESTED THIS PACKAGE ASAP) KGM  
OLA CONTACT: FAITH BURTON (514-1653)  
12/11/92 DF FYI  
FILE: INDEPENDENT COUNSEL/WALSH, LAWRENCE E., AG CHRON

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY  
\*\*\*\*\*





## Office of the Attorney General

Washington, D.C. 20530

December 14, 1992

The Honorable Bob Dole  
United States Senate  
Washington, D.C. 20510

Dear Senator Dole:

This is in response to your letters urging investigation into the actions of the Office of Independent Counsel of Iran/Contra in its handling of the indictment returned against Caspar Weinberger on October 30, 1992. You have requested a Justice Department investigation or, in the alternative, supported a request for appointment of an independent counsel, based on concerns about the timing of the indictment and the possibility of improper disclosure of the indictment to the Clinton/Gore campaign. In your most recent letter, you and Senator Strom Thurmond also have noted several federal criminal statutes that may have been violated.

The provisions of the Independent Counsel Act, 28 U.S.C §§ 591-599, apply only to certain high-level positions within the executive branch. An independent counsel appointed pursuant to the Act does not serve in a position covered by the Act. The Act does permit discretionary use of its procedures to conduct investigations of persons not otherwise covered by the statute, see 28 U.S.C. § 591(c), but that section only applies where there are sufficient grounds to warrant a preliminary investigation and when an investigation by the Department of Justice would result in a personal, financial or political conflict of interest. In this case, I have concluded that no such conflict of interest would bar the Department of Justice from investigating allegations of illegal conduct on the part of an independent counsel should such an investigation otherwise be appropriate.

As you know, it is the Department's policy not to confirm or deny whether a criminal investigation has been commenced or is ongoing. However, you can rest assured that the Department will carefully evaluate the allegations set forth in your letters.

I appreciate your bringing your views to my attention.

Sincerely,

A handwritten signature in black ink, appearing to read "W. P. Barr", is written above the typed name.

William P. Barr  
Attorney General




# Action Memorandum

ATTORNEY GENERAL/DEPUTY ATTORNEY GENERAL/ASSOCIATE ATTORNEY GENERAL

**Subject** Letters from Senator Dole requesting an appointment of independent counsel to investigate Independent Counsel Walsh

**Date** DEC 7 1992  
RSM:JCK:MJS:JAF:FSE:bds  
CTS #'s: 930001212; 930001213

**TO:** William P. Barr  
Attorney General

**FROM**  Robert S. Mueller, III  
Assistant Attorney General  
Criminal Division

**Summary:** Senator Dole concurs in request of Senate Judiciary Committee  
Member that independent counsel be appointed to investigate  
Independent Counsel Walsh; Criminal Division recommends declining  
the request.

**Action Required:** Signature

**Due Date/Action**  
**Forcing Event:** \_\_\_\_\_

**DOJ Coordination:** Division/Component and Views (attach comments if other than concurrence)

**Concurrences:**

	DAG	ASG	OLC	OPC	OLA	JMD	OAPM
<b>Initials</b>		XX	XX	XX	XX	XX	XX
<b>Date</b>							

**External Coordination:** Agency and Views (attach comments if other than concurrence).

**Contact Point for**  
**Additional Information:** \_\_\_\_\_



# United States Senate

OFFICE OF THE REPUBLICAN LEADER

WASHINGTON, DC 20510-7020

November 20, 1992

The Honorable William P. Barr  
Attorney General of the United States  
Department of Justice  
Washington, D.C. 20530

Dear Mr. Attorney General:

In connection with the review by the Department of Justice of the possible occurrence of any illegal, improper, or unethical activities within the Office of Independent Counsel Lawrence Walsh, we take this opportunity to bring to your attention certain Federal criminal statutes and rules which we believe warrant your consideration.

(a) 18 U.S.C. 595, which, among other things, relates to government employees using their official capacity to interfere with or affect the election of any candidate for President. We have serious concerns whether improper considerations, including political considerations, by the Office of Independent Counsel Lawrence Walsh went into the decision to bring the indictment on October 30, 1992 against Caspar Weinberger and the timing of the indictment for the purpose of interfering with or affecting the Presidential election.

(b) 18 U.S.C. 241, which relates to a conspiracy to deprive an individual of his or her constitutionally protected rights. We have concerns whether improper considerations, including political considerations, went into the decision to bring the indictment against Caspar Weinberger on October 30, 1992.

(c) Rule 6(e) of the Federal Rules of Criminal Procedure prohibits the disclosure of matters occurring before the grand jury. We have concerns whether information before the grand jury was disclosed improperly to the Clinton/Gore campaign or other interested or related parties. Press reports indicate that the Clinton/Gore presidential campaign released a press release dated October 29, 1992 commenting in detail on the indictment which was handed up one day later on October 30, 1992.

This list is not intended to be exclusive and reflects certain matters which we believe should be reviewed and addressed by the Department of Justice. We look forward to your response.

With kindest regards and best wishes,

Sincerely,



STROM THURMOND



BOB DOLE



DEPARTMENT OF JUSTICE  
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: DOLE, SENATOR BOB      REPUBLICAN LEADER  
To: AG.  
Date Received: 11-12-92      Date Due: 12-16-92      ODD: 11-27-92  
Subject & Date      Control #: X921112163799

11-11-92 LETTER (FAX COPY) FROM THE REPUBLICAN LEADER  
STRONGLY SUPPORTING THE REQUEST OF THE NONMAJORITY PARTY  
MEMBERS OF THE SENATE JUDICIARY COMMITTEE REQUESTING THAT  
THE AG APPLY FOR THE APPOINTMENT OF AN INDEPENDENT COUNSEL  
TO INVESTIGATE WHETHER OR NOT THERE WERE ANY ILLEGAL,  
IMPROPER, OR UNETHICAL ACTIVITIES BY ANY EMPLOYEES OF THE  
OFFICE OF INDEPENDENT COUNSEL LAWRENCE WALSH IN BRINGING AN  
INDICTMENT AGAINST CASPAR WEINBERGER ON OCTOBER 30, 1992.\*\*

Referred To:	Date:	Referred To:	Date:	
(1) OAG;	12-09-92	(5)		W/IN:
(2)		(6)		
(3)		(7)		PRTY:
(4)		(8)		1S
INTERIM BY:		DATE:		OPR:
Sig. For: AG.		Date Released: 12-14-92		MLH

Remarks

(1) W/MEMO FROM CRM TO THE AG DATED 12-07-92 SUBMITTING A  
PREPARED RESPONSE FOR AG SIGNATURE. CC PROVIDED TO DAG.  
(PER CRM, OAG/LEVIN REQUESTED THIS PACKAGE ASAP) KGM  
12-14-92 AG SIGNED LETTER DATED 12-14-92 BY OAG. ORIGINAL  
WAS DISPATCHED BY EXEC. SEC. HINES VIA OLA MESSENGER ON  
12-14-92. CC TO CRM, LEGIS FILES, OLA. (LETTER ALSO  
CLOSED EXEC. SEC. 92112316895 & 92111216367.) TEJ

Other Remarks:

OLA CONTACT:

FILE: INDEPENDENT COUNSEL/WALSH, LAWRENCE E., AG CHRON

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY  
\*\*\*\*\*

11 November 92



DEPARTMENT OF JUSTICE  
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: DOLE, SENATOR BOB      REPUBLICAN LEADER  
To: AG.      ODD: 11-27-92  
Date Received: 11-12-92      Date Due: 12-16-92      Control #: X92111216379  
Subject & Date  
11-11-92 LETTER (FAX COPY) FROM THE REPUBLICAN LEADER  
STRONGLY SUPPORTING THE REQUEST OF THE NONMAJORITY PARTY  
MEMBERS OF THE SENATE JUDICIARY COMMITTEE REQUESTING THAT  
THE AG APPLY FOR THE APPOINTMENT OF AN INDEPENDENT COUNSEL  
TO INVESTIGATE WHETHER OR NOT THERE WERE ANY ILLEGAL,  
IMPROPER, OR UNETHICAL ACTIVITIES BY ANY EMPLOYEES OF THE  
OFFICE OF INDEPENDENT COUNSEL LAWRENCE WALSH IN BRINGING AN  
INDICTMENT AGAINST CASPAR WEINBERGER ON OCTOBER 30, 1992.\*\*  
Referred To:      Date:      Referred To:      Date:  
(1) CRM;MUELLER      11-12-92      (5)      W/IN:  
(2) OAG;      12-09-92      (6)  
(3)      (7)      PRTY:  
(4)      (8) OAG;      12-09-92      1S  
INTERIM BY:      DATE:      OPR:  
Sig. For: AG.      Date Released: SEE "9"      MLH

Remarks

\*\* HOPES THAT THE AG WILL GIVE PROMPT CONSIDERATION TO THIS  
MOST IMPORTANT MATTER.  
SEE E.S. 92111216367, 92111216370 & 92111216374.  
INFO CC: OAG, OAG (STEVENS), DAG, ASG, OLA (BURTON).  
(1) COMBINE RESPONSE WITH E.S. 92111216367. PREPARE  
RESPONSE FOR AG SIGNATURE AND RETURN TO EXEC. SEC.,  
WITH COPY OF INCOMING, FOR FURTHER COORDINATION.

Other Remarks:

11-16-92: ORIGINAL REC'D AND FORWARDED TO AG FILES. BJ  
SEE E.S. 92112316895.  
(2) W/MEMO FROM CRM TO THE AG DATED 12-07-92 SUBMITTING A  
PREPARED RESPONSE FOR AG SIGNATURE. CC PROVIDED TO DAG.  
(PER CRM, OAG/LEVIN REQUESTED THIS PACKAGE ASAP) KGM  
OLA CONTACT: FAITH BURTON (514-1653)  
11/17/92 DF FYI  
FILE: INDEPENDENT COUNSEL/WALSH, LAWRENCE E., AG CHRON

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY  
\*\*\*\*\*



# Action Memorandum

ATTORNEY GENERAL/DEPUTY ATTORNEY GENERAL/ASSOCIATE ATTORNEY GENERAL

**Subject** Letters from Senator Dole requesting an appointment of independent counsel to investigate Independent Counsel Walsh

**Date** DEC 7 1992  
RSM:JCK:MJS:JAF:FSE:bds  
CTS #'s: 930001212; 930001213

**TO:** William P. Barr  
Attorney General

**FROM:** Robert S. Mueller, III  
Assistant Attorney General  
Criminal Division

**Summary:** Senator Dole concurs in request of Senate Judiciary Committee  
Member that independent counsel be appointed to investigate  
Independent Counsel Walsh; Criminal Division recommends declining  
the request.

**Action Required:** Signature

**Due Date/Action**  
**Forcing Event:**

**DOJ Coordination:** Division/Component and Views (attach comments if other than concurrence)

Concurrences:	DAG	ASG	OLC	OPC	OLA	JMD	OAPM
Initials		XX	XX	XX	XX	XX	XX
Date							

**External Coordination:** Agency and Views (attach comments if other than concurrence).

**Contact Point for**  
**Additional Information:**





Office of the Attorney General

Washington, D.C. 20530

December 14, 1992

The Honorable Bob Dole  
United States Senate  
Washington, D.C. 20510

Dear Senator Dole:

This is in response to your letters urging investigation into the actions of the Office of Independent Counsel of Iran/Contra in its handling of the indictment returned against Caspar Weinberger on October 30, 1992. You have requested a Justice Department investigation or, in the alternative, supported a request for appointment of an independent counsel, based on concerns about the timing of the indictment and the possibility of improper disclosure of the indictment to the Clinton/Gore campaign. In your most recent letter, you and Senator Strom Thurmond also have noted several federal criminal statutes that may have been violated.

The provisions of the Independent Counsel Act, 28 U.S.C §§ 591-599, apply only to certain high-level positions within the executive branch. An independent counsel appointed pursuant to the Act does not serve in a position covered by the Act. The Act does permit discretionary use of its procedures to conduct investigations of persons not otherwise covered by the statute, see 28 U.S.C. § 591(c), but that section only applies where there are sufficient grounds to warrant a preliminary investigation and when an investigation by the Department of Justice would result in a personal, financial or political conflict of interest. In this case, I have concluded that no such conflict of interest would bar the Department of Justice from investigating allegations of illegal conduct on the part of an independent counsel should such an investigation otherwise be appropriate.

As you know, it is the Department's policy not to confirm or deny whether a criminal investigation has been commenced or is ongoing. However, you can rest assured that the Department will carefully evaluate the allegations set forth in your letters.

I appreciate your bringing your views to my attention.

Sincerely,

A handwritten signature in dark ink, appearing to read "WP Barr", is written over the typed name.

William P. Barr  
Attorney General



# United States Senate

OFFICE OF THE REPUBLICAN LEADER

WASHINGTON, DC 20510-7020

92 NOV 16 1992

November 11, 1992

The Honorable William P. Barr  
Attorney General of the United States  
Department of Justice  
Washington, D.C. 20530

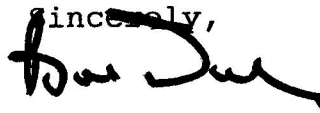
Dear Mr. Attorney General:

It is my understanding that pursuant to 28 U.S.C. 592(g), a majority of all nonmajority party members of the Senate Judiciary Committee have written to you requesting that you apply for the appointment of an independent counsel to investigate whether or not there were any illegal, improper, or unethical activities by any employees of the office of independent counsel Lawrence Walsh in bringing an indictment against Caspar Weinberger on October 30, 1992.

I strongly support this request and hope that you will give prompt consideration to this most important matter. As I have previously indicated to you, this indictment was announced just four days before the November 3rd election. Press reports indicate that the Clinton/Gore presidential campaign released a press release dated October 29, 1992 commenting in detail on the indictment.

Obviously, such circumstances raise serious questions, including questions as to the timing of the indictment and whether improper or illegal disclosure of the indictment was made to the Clinton/Gore campaign.

Sincerely,



BOB DOLE



NEWS

FROM:

U.S. SENATOR FOR KANSAS

SENATE REPUBLICAN LEADER

Bob Dole



FOR IMMEDIATE RELEASE  
NOVEMBER 11, 1992

CONTACT: WALT RIKER  
(202) 224-5358

**SENATE REPUBLICANS CALL FOR SPECIAL PROSECUTOR TO INVESTIGATE  
SPECIAL PROSECUTOR WALSH;  
FOUR JUDICIARY MEMBERS WRITE ATTORNEY GENERAL BARR TO  
START INVESTIGATION OF POSSIBLE UNETHICAL,  
POLITICAL AND ILLEGAL ACTIVITIES.**

WASHINGTON -- Concerned about possible political, illegal or unethical activities in Lawrence Walsh's ongoing Iran/Contra probe, four Republican members of the Senate Judiciary Committee have officially requested the U.S. Department of Justice to take the necessary steps for the appointment of an independent counsel to investigate the Walsh operation.

In letters to Attorney General William P. Barr, Senators Alan Simpson (R-Wyoming), Strom Thurmond (R-SC), Hank Brown (R-Colorado) and Charles Grassley (R-Iowa) raised questions about the timing of the recent Caspar Weinberger indictment and the possibility of improper disclosure to the Clinton/Gore campaign by democrat activists in Walsh's office.

Under the Independent Counsel Statute, the Judiciary Committee, or a majority of either party's membership on the committee, is entitled to make such a request. The Attorney General has 30 days after receipt of the request to deliver a report to the committee indicating his intentions with respect to an investigation.

"The entire Walsh operation appears to have been seriously compromised by recent developments, including strong indications of partisanship and election-year manipulation. It's time to clear the air. I believe Mr. Walsh would welcome this opportunity to defend the independence of the independent counsel's office. The American people deserve no less," Senator Dole said.

Dear Mr. Attorney General:

Pursuant to 28 U.S.C. 592(g), we, the undersigned, comprising a majority of all nonmajority party members of the Senate Judiciary Committee, do hereby request that you take the necessary steps for the appointment of an independent counsel to investigate whether or not there were any illegal, improper, or unethical activities in regards to the actions of the office of independent counsel Lawrence Walsh in bringing an indictment against Caspar Weinberger on October 30, 1992.

As you know, this indictment was announced on October 30, 1992, just four days before the November 3rd election. Press reports indicate that the Clinton/Gore presidential campaign released a press release dated October 29, 1992 commenting in detail on the indictment.

Among other concerns, we have questions whether or not improper political considerations went into the timing of the indictment, and whether improper disclosure of the indictment was made to the Clinton/Gore campaign.

We hope you will give prompt consideration to this most important matter.

Sincerely,

  
Alan X. Simpson

  
Strom Thurmond

  
Hank Brown

Senator Grassley made a similar request in a separate letter.  
FOIA # 60048 (URTS 16457) DocId: 70106670 Page 12

NARA-18-1003-A-002350



DEPARTMENT OF JUSTICE  
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: THURMOND, SENATOR STROM AND TWO OTHER MEMBERS

To: AG.

ODD: 11-27-92

Date Received: 11-12-92 Date Due: 12-10-92 Control #: X921112163709

Subject & Date

11-10-92 LETTER (FAX COPY) FROM THE RANKING MINORITY MEMBER  
AND TWO OTHER MEMBERS OF THE SENATE JUDICIARY COMMITTEE,  
PURSUANT TO 28 U.S.C. 592(g), REQUESTING THAT THE AG TAKE  
THE NECESSARY STEPS FOR THE APPOINTMENT OF AN INDEPENDENT  
COUNSEL TO INVESTIGATE WHETHER OR NOT THERE WERE ANY  
ILLEGAL, IMPROPER, OR UNETHICAL ACTIVITIES IN REGARDS TO THE  
ACTIONS OF THE OFFICE OF INDEPENDENT COUNSEL LAWRENCE WALSH  
IN BRINGING AN INDICTMENT AGAINST CASPAR WEINBERGER ON \*\*

Referred To: Date:

Referred To: Date:

(1) OAG; 12-09-92

(5)

W/IN:

(2) (6)

(3) (7)

PRTY:

(4) (8)

1S

INTERIM BY:

DATE:

OPR:

Sig. For: AG.

Date Released: 12-10-92

MLH

Remarks

(1) W/MEMO FROM CRM TO THE AG DATED 12-07-92 SUBMITTING A  
PREPARED RESPONSE FOR AG SIGNATURE. CC PROVIDED TO DAG.  
(PER CRM, OAG/LEVIN REQUESTED THIS PACKAGE ASAP) KGM  
12-10-92 AG SIGNED LETTER DATED 12-10-92 BY OAG. ORIGINAL  
HANDCARRIED TO HILL BY OLA ON 12-10-92. OLA PROVIDED EXEC.  
SEC. A COPY FOR THE AG FILES. CC TO LEGISLATIVE FILES. (TJ)

Other Remarks:

OLA CONTACT:

FILE: INDEPENDENT COUNSEL/WALSH, LAWRENCE E., AG CHRON

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY  
\*\*\*\*\*

10 NOVEMBER 92



DEPARTMENT OF JUSTICE  
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: THURMOND, SENATOR STROM AND TWO OTHER MEMBERS  
To: AG. ODD: 11-27-92  
Date Received: 11-12-92 Date Due: 11-27-92 Control #: X92111216370  
Subject & Date

11-10-92 LETTER (FAX COPY) FROM THE RANKING MINORITY MEMBER  
AND TWO OTHER MEMBERS OF THE SENATE JUDICIARY COMMITTEE,  
PURSUANT TO 28 U.S.C. 592(g), REQUESTING THAT THE AG TAKE  
THE NECESSARY STEPS FOR THE APPOINTMENT OF AN INDEPENDENT  
COUNSEL TO INVESTIGATE WHETHER OR NOT THERE WERE ANY  
ILLEGAL, IMPROPER, OR UNETHICAL ACTIVITIES IN REGARDS TO THE  
ACTIONS OF THE OFFICE OF INDEPENDENT COUNSEL LAWRENCE WALSH  
IN BRINGING AN INDICTMENT AGAINST CASPAR WEINBERGER ON \*\*

Referred To:		Date:	Referred To:		Date:	
(1)	CRM;MUELLER	11-12-92	(5)			W/IN:
(2)			(6)			
(3)			(7)			PRTY:
(4)			(8)	OAG;	12-09-92	1S
INTERIM BY:			DATE:			OPR:
Sig. For: AG.			Date Released: SEE "9"			MLH

Remarks

\*\* OCTOBER 30, 1992. QUESTIONS WHETHER OR NOT IMPROPER  
POLITICAL CONSIDERATIONS WENT INTO THE TIMING OF THE  
INDICTMENT, AND WHETHER IMPROPER DISCLOSURE OF THE  
INDICTMENT WAS MADE TO THE CLINTON/GORE CAMPAIGN.  
SEE S.E. 92111216367, 92111216374 & 92111216379.

INFO CC: OAG, OAG (STEVENS), DAG, ASG, OLA (BURTON).

(1) PREPARE RESPONSE FOR AG SIGNATURE AND RETURN TO

Other Remarks:

EXEC. SEC., WITH COPY OF INCOMING, FOR FURTHER COORDINATION.  
11-17-92: ORIG. REC'D AND FORWARDED TO AG FILES. (MLH)  
SEE E.S. 92112316895.

OLA CONTACT: FAITH BURTON (514-1653)  
11/17/92 DF FYI  
FILE: INDEPENDENT COUNSEL/WALSH, LAWRENCE E.

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY  
\*\*\*\*\*



# Action Memorandum

ATTORNEY GENERAL/DEPUTY ATTORNEY GENERAL/ASSOCIATE ATTORNEY GENERAL

**Subject** Independent Counsel Request from  
Senate Judiciary Committee Concerning Independent  
Counsel Walsh

**Date**

DEC

RSM:JCK:MJS:SMG:aim  
CTS#'s: 930001214; 930001215

**TO:** William P. Barr  
Attorney General

**FROM:** Robert S. Mueller, III  
Assistant Attorney General  
Criminal Division

**Summary:** Senate Judiciary Committee Members request appointment of an  
independent counsel to investigate whether the timing of Independent  
Counsel Walsh's indictment of Caspar Weinberger was politically  
motivated. Criminal Division recommends declining the request.

**Action Required:** Signature

**Due Date/Action**

**Forcing Event:** 12/10/92 - Independent Counsel Statute Requires Response  
within 30 days.

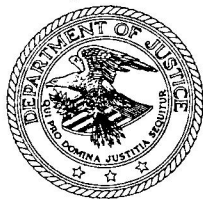
**DOJ Coordination:** Division/Component and Views (attach comments  
if other than concurrence)

Concurrences:	DAG	ASG	OLC	OPC	OLA	JMD	OAPM
Initials		XX	XX	XX	XX	XX	XX
Date							

**External Coordination:** Agency and Views (attach comments if other  
than concurrence).

**Contact Point for**  
**Additional Information:**





Office of the Attorney General  
Washington, D.C. 20530

December 10, 1992

Committee on the Judiciary  
United States Senate  
Washington, D.C. 20515-6275

Dear Committee Member:

On November 9 and 10, 1992, a majority of the non-majority party members of the Senate Committee on the Judiciary wrote me, pursuant to the Independent Counsel Statute, 28 U.S.C. § 592(g), requesting the appointment of an Independent Counsel to investigate "whether or not there were any illegal, improper, or unethical activities in regards to the actions of the Office of Independent Counsel Lawrence Walsh in bringing an indictment against Caspar Weinberger on October 30, 1992."

The Department has determined that there is no basis to proceed under the Independent Counsel Statute. Mr. Walsh is not a covered person under 28 U.S.C. § 591(b), and the investigation and prosecution of Mr. Walsh would not result in a personal, financial, or political conflict of interest under 28 U.S.C. § 591(c).

The allegation has been referred to the Criminal Division, which will take any appropriate action.

Pursuant to 28 U.S.C. § 592(g)(4), I request that the Committee promptly make public this letter.

Sincerely,

William P. Barr  
Attorney General



JOSEPH R. BIDEN, JR., DELAWARE, CHAIRMAN

EDWARD M. KENNEDY, MASSACHUSETTS  
HOWARD M. METZENBAUM, OHIO  
DENNIS DeCONCINI, ARIZONA  
PATRICK J. LEAHY, VERMONT  
HOWELL HEFLIN, ALABAMA  
PAUL SIMON, ILLINOIS  
HERBERT KOHL, WISCONSIN

STROM THURMOND, SOUTH CAROLINA  
ORRIN G. HATCH, UTAH  
ALAN K. SIMPSON, WYOMING  
CHARLES E. GRASSLEY, IOWA  
ARLEN SPECTER, PENNSYLVANIA  
HANK BROWN, COLORADO

# United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

RONALD A. KLAHN, CHIEF COUNSEL  
CYNTHIA C. HOGAN, STAFF DIRECTOR  
THADDEUS E. STROM, MINORITY CHIEF COUNSEL  
AND STAFF DIRECTOR

November 10, 1992

The Honorable William P. Barr  
Attorney General of the United States  
Department of Justice  
Washington, D.C. 20530

Dear Mr. Attorney General:

Pursuant to 28 U.S.C. 592(g), we, the undersigned, comprising a majority of all nonmajority party members of the Senate Judiciary Committee, do hereby request that you take the necessary steps for the appointment of an independent counsel to investigate whether or not there were any illegal, improper, or unethical activities in regards to the actions of the office of independent counsel Lawrence Walsh in bringing an indictment against Caspar Weinberger on October 30, 1992.


As you know, this indictment was announced on October 30, 1992, just four days before the November 3rd election. Press reports indicate that the Clinton/Gore presidential campaign released a press release dated October 29, 1992 commenting in detail on the indictment.

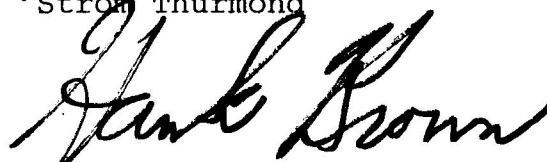
Among other concerns, we have questions whether or not improper political considerations went into the timing of the indictment, and whether improper disclosure of the indictment was made to the Clinton/Gore campaign.

We hope you will give prompt consideration to this most important matter.

Sincerely,

  
Alan K. Simpson

  
Strom Thurmond

  
Hank Brown



DEPARTMENT OF JUSTICE  
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: DOLE, SENATOR BOB      REPUBLICAN LEADER  
To: AG.      ODD: 11-27-92  
Date Received: 11-12-92      Date Due: 12-16-92      Control #: X92111216367  
Subject & Date

11-09-92 LETTER (FAX COPY) FROM THE REPUBLICAN LEADER  
REQUESTING THAT THE DEPARTMENT INVESTIGATE WHETHER OR NOT  
THERE WERE ANY ILLEGAL, IMPROPER, OR UNETHICAL ACTIVITIES IN  
REGARDS TO THE ACTIONS OF THE OFFICE OF INDEPENDENT COUNSEL  
LAWRENCE WALSH IN BRINGING AN INDICTMENT AGAINST  
CASPAR WEINBERGER ON OCTOBER 30, 1992. QUESTIONS WHETHER OR  
NOT IMPROPER POLITICAL CONSIDERATIONS WENT INTO THE TIMING  
OF THE INDICTMENT, AND WHETHER IMPROPER DISCLOSURE OF THE \*\*

	Referred To:	Date:	Referred To:	Date:	
(1)	CRM;MUELLER	11-12-92	(5)		W/IN:
(2)	OAG;	12-09-92	(6)		
(3)			(7)		PRTY:
(4)			(8)		1S
INTERIM BY:			DATE:		OPR:
Sig. For: AG.			Date Released: 12-14-92		MLH

Remarks

\*\* INDICTMENT WAS MADE TO THE CLINTON/GORE CAMPAIGN.  
SEE E.S. 92111216370, 92111216374 & 92111216379.  
INFO CC: OAG, OAG (STEVENS), DAG, ASG, OLA (BURTON).  
(1) PREPARE RESPONSE FOR AG SIGNATURE AND RETURN TO  
EXEC. SEC., WITH COPY OF INCOMING, FOR FURTHER COORDINATION.  
11-12-92: ORIG. REC'D AND FORWARDED TO AG FILES. (MLH)  
SEE E.S. 92112316895.

Other Remarks:

(2) W/MEMO FROM CRM TO THE AG DATED 12-07-92 SUBMITTING A  
PREPARED RESPONSE FOR AG SIGNATURE. CC PROVIDED TO DAG.  
12-14-92 AG SIGNED LETTER DATED 12-14-92 BY OAG. ORIGINAL  
DISPATCHED BY E.S. HINES VIA OLA MESSENGER ON 12-14-92. CC  
CRM, LEGIS FILES, OLA. (C/O E.S. 92111216379&92112316898.)  
OLA CONTACT: FAITH BURTON (514-1653)  
11/17/92 DF FYI  
FILE: INDEPENDENT COUNSEL/WALSH, LAWRENCE E., AG CHRON

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY  
\*\*\*\*\*

9 November 92



# Action Memorandum

ATTORNEY GENERAL/DEPUTY ATTORNEY GENERAL/ASSOCIATE ATTORNEY GENERAL

**Subject** Letters from Senator Dole requesting an appointment of independent counsel to investigate Independent Counsel Walsh

**Date** DEC 7 1992  
RSM:JCK:MJS:JAF:FSE:bds  
CTS #'s: 930001212; 930001213

**TO:** William P. Barr  
Attorney General

**FROM:** Robert S. Mueller, III  
Assistant Attorney General  
Criminal Division

**Summary:** Senator Dole concurs in request of Senate Judiciary Committee  
Member that independent counsel be appointed to investigate  
Independent Counsel Walsh; Criminal Division recommends declining  
the request.

**Action Required:** Signature

**Due Date/Action**  
**Forcing Event:** \_\_\_\_\_

**DOJ Coordination:** Division/Component and Views (attach comments if other than concurrence)

**Concurrences:** DAG ASG OLC OPC OLA JMD OAPM

**Initials**

**Date**

		XX	XX	XX	XX	XX	XX	

**External Coordination:** Agency and Views (attach comments if other than concurrence).

**Contact Point for**  
**Additional Information:** \_\_\_\_\_





Office of the Attorney General

Washington, D.C. 20530

December 14, 1992

The Honorable Bob Dole  
United States Senate  
Washington, D.C. 20510

Dear Senator Dole:

This is in response to your letters urging investigation into the actions of the Office of Independent Counsel of Iran/Contra in its handling of the indictment returned against Caspar Weinberger on October 30, 1992. You have requested a Justice Department investigation or, in the alternative, supported a request for appointment of an independent counsel, based on concerns about the timing of the indictment and the possibility of improper disclosure of the indictment to the Clinton/Gore campaign. In your most recent letter, you and Senator Strom Thurmond also have noted several federal criminal statutes that may have been violated.

The provisions of the Independent Counsel Act, 28 U.S.C §§ 591-599, apply only to certain high-level positions within the executive branch. An independent counsel appointed pursuant to the Act does not serve in a position covered by the Act. The Act does permit discretionary use of its procedures to conduct investigations of persons not otherwise covered by the statute, see 28 U.S.C. § 591(c), but that section only applies where there are sufficient grounds to warrant a preliminary investigation and when an investigation by the Department of Justice would result in a personal, financial or political conflict of interest. In this case, I have concluded that no such conflict of interest would bar the Department of Justice from investigating allegations of illegal conduct on the part of an independent counsel should such an investigation otherwise be appropriate.

As you know, it is the Department's policy not to confirm or deny whether a criminal investigation has been commenced or is ongoing. However, you can rest assured that the Department will carefully evaluate the allegations set forth in your letters.

I appreciate your bringing your views to my attention.

Sincerely,

A handwritten signature in dark ink, appearing to read "W. P. Barr", is written over a horizontal line.

William P. Barr  
Attorney General



# United States Senate

OFFICE OF THE REPUBLICAN LEADER

WASHINGTON, DC 20510-7020

November 9, 1992

The Honorable William P. Barr  
Attorney General of the United States  
Department of Justice  
Washington, D.C. 20530

Dear Mr. Attorney General:

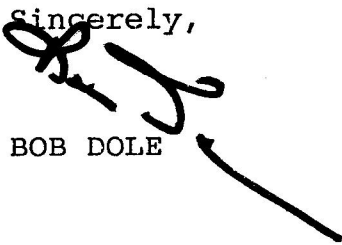
I hereby request that the Department of Justice investigate whether or not there were any illegal, improper, or unethical activities in regards to the actions of the office of independent counsel Lawrence Walsh in bringing an indictment against Caspar Weinberger on October 30, 1992.

As you know, this indictment was announced just four days before the November 3rd election. Press reports indicate that the Clinton/Gore presidential campaign released a press release dated October 29, 1992 commenting in detail on the indictment.

Among other concerns, I have questions whether or not improper political considerations went into the timing of the indictment, and whether improper disclosure of the indictment was made to the Clinton/Gore campaign.

I hope you will give prompt consideration to this most important matter.

Sincerely,

  
BOB DOLE



DEPARTMENT OF JUSTICE  
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: GRASSLEY, SENATOR CHARLES E.

To: AG.

ODD: 11-27-92

Date Received: 11-12-92 Date Due: 12-10-92 Control #: X92111216374

Subject & Date

11-09-92 LETTER (FAX COPY) JOINING WITH SENATORS THURMOND, SIMPSON AND BROWN, IN REQUESTING THAT THE AG APPOINT AN INDEPENDENT COUNSEL TO INVESTIGATE WHETHER OR NOT THERE WERE ANY ILLEGAL, IMPROPER, OR UNETHICAL ACTIVITIES IN REGARDS TO THE ACTIONS OF THE OFFICE OF INDEPENDENT COUNSEL LAWRENCE WALSH IN BRINGING AN INDICTMENT AGAINST CASPAR WEINBERGER ON OCTOBER 30, 1992.

(SEE E.S. 92111216367, 92111216370 & 92111216379.)

Referred To: Date: Referred To: Date:

- |                 |          |     |
|-----------------|----------|-----|
| (1) CRM;MUELLER | 11-12-92 | (5) |
| (2) OAG;        | 12-09-92 | (6) |
| (3)             |          | (7) |
| (4)             |          | (8) |

W/IN:

PRTY:

1S

OPR:

MLH

INTERIM BY:

Sig. For: AG.

DATE:

Date Released: 12-10-92

Remarks

INFO CC: OAG, OAG (STEVENS), DAG, ASG, OLA (BURTON).

(1) PREPARE RESPONSE FOR AG SIGNATURE AND RETURN TO EXEC. SEC., WITH COPY OF INCOMING, FOR FURTHER COORDINATION. 11-17-92: ORIG. REC'D AND FORWARDED TO AG FILES. (MLH) SEE E.S. 92112316895.

(2) W/MEMO FROM CRM TO THE AG DATED 12-07-92 SUBMITTING A PREPARED RESPONSE FOR AG SIGNATURE. CC PROVIDED TO DAG.

Other Remarks:

(PER CRM, OAG/LEVIN REQUESTED THIS PACKAGE ASAP) KGM 12-10-92 AG SIGNED LETTER DATED 12-10-92 BY OAG. ORIGINAL HANDCARRIED TO HILL BY OLA ON 12-10-92. OLA PROVIDED EXEC. SEC. A COPY FOR THE AG FILES. CC TO LEGISLATIVE FILES. (TJ)

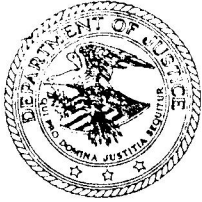
OLA CONTACT: FAITH BURTON (514-1653)

11/17/92 DF FYI

FILE: INDEPENDENT COUNSEL/WALSH, LAWRENCE E., AG CHRON

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY  
\*\*\*\*\*





Office of the Attorney General  
Washington, D. C. 20530

December 10, 1992

Committee on the Judiciary  
United States Senate  
Washington, D.C. 20515-6275

Dear Committee Member:

On November 9 and 10, 1992, a majority of the non-majority party members of the Senate Committee on the Judiciary wrote me, pursuant to the Independent Counsel Statute, 28 U.S.C. § 592(g), requesting the appointment of an Independent Counsel to investigate "whether or not there were any illegal, improper, or unethical activities in regards to the actions of the Office of Independent Counsel Lawrence Walsh in bringing an indictment against Caspar Weinberger on October 30, 1992."

The Department has determined that there is no basis to proceed under the Independent Counsel Statute. Mr. Walsh is not a covered person under 28 U.S.C. § 591(b), and the investigation and prosecution of Mr. Walsh would not result in a personal, financial, or political conflict of interest under 28 U.S.C. § 591(c).

The allegation has been referred to the Criminal Division, which will take any appropriate action.

Pursuant to 28 U.S.C. § 592(g)(4), I request that the Committee promptly make public this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "W. P. Barr", is written over a horizontal line.

William P. Barr  
Attorney General



# Action Memorandum


ATTORNEY GENERAL/DEPUTY ATTORNEY GENERAL/ASSOCIATE ATTORNEY GENERAL

**Subject** Independent Counsel Request from  
Senate Judiciary Committee Concerning Independent  
Counsel Walsh

**Date** DEC 7 1992

RSM:JCK:MJS:SMG:aim  
CTS#'s: 930001214; 930001215

**TO:** William P. Barr  
Attorney General

**FROM:**  Robert S. Mueller, III  
Assistant Attorney General  
Criminal Division

**Summary:** Senate Judiciary Committee Members request appointment of an  
independent counsel to investigate whether the timing of Independent  
Counsel Walsh's indictment of Caspar Weinberger was politically  
motivated. Criminal Division recommends declining the request.

**Action Required:** Signature

**Due Date/Action**

**Forcing Event:** 12/10/92 - Independent Counsel Statute Requires Response  
within 30 days.

**DOJ Coordination:** Division/Component and Views (attach comments  
if other than concurrence)

Concurrences:	DAG	ASG	OLC	OPC	OLA	JMD	OAPM
Initials		XX	XX	XX	XX	XX	XX
Date							

**External Coordination:** Agency and Views (attach comments if other  
than concurrence).

**Contact Point for  
Additional Information:**



# United States Senate

WASHINGTON, DC 20510

November 9, 1992

The Honorable William P. Barr  
Attorney General of the United States  
Department of Justice  
Washington, D.C. 20530

Dear Mr. Attorney General:

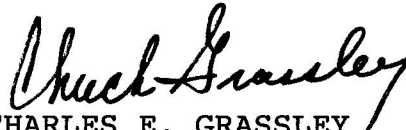
Pursuant to 28 U.S.C. 592(g), I hereby join with Senators Thurmond, Simpson and Brown, in requesting that you appoint an independent counsel to investigate whether or not there were any illegal, improper, or unethical activities in regards to the actions of the office of independent counsel Lawrence Walsh in bringing an indictment against Caspar Weinberger on October 30, 1992.

As you know, this indictment was announced just four days before the November 3rd election. Press reports indicate that the Clinton/Gore presidential campaign released a press release dated October 29, 1992 commenting in detail on the indictment.

Among other concerns, I have questions whether or not improper political considerations went into the timing of the indictment, and whether improper disclosure of the indictment was made to the Clinton/Gore campaign.

I hope you will give prompt consideration to this most important matter.

Sincerely,



CHARLES E. GRASSLEY  
United States Senator



DEPARTMENT OF JUSTICE  
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: MOSELEY, JONATHON, ARLINGTON, VA

To: AG.

ODD: 11-27-92

Date Received: 11-09-92 Date Due: 11-27-92 Control #: X92111216359

Subject & Date

11-09-92 LETTER (FAX) URGING THE AG TO APPOINT A SPECIAL  
PROSECUTOR TO RESOLVE QUESTIONS SURROUNDING LAWRENCE WALSH'S  
ALLEGED LEAKING OF A HIGHLY SENSITIVE INDICTMENT AND  
POSSIBLE COLLUSION WITH ONE OF THE PRESIDENTIAL CAMPAIGNS.

	Referred To:	Date:		Referred To:	Date:	
(1)	CRM;MUELLER	11-12-92	(5)			W/IN:
(2)			(6)			
(3)			(7)			PRTY:
(4)			(8)			1
	INTERIM BY:			DATE:		OPR:
	Sig. For: CRM			Date Released: 12-10-92		EHZ

Remarks

INFO CC: OAG, DAG.

(1) RETURN CONTROL SHEET W/COPY OF SIGNED AND DATED RESPONSE  
TO EXEC. SEC., ROOM 4400-AA.

12-10-92 CRM REPLIED BY LETTER DATED 12-08-92. (TJ)

Other Remarks:

OLA CONTACT:

FILE: INDEPENDENT COUNSEL/WALSH, LAWRENCE E.

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY  
\*\*\*\*\*

@10  
9  
November





U. S. Department of Justice

Criminal Division

Office of the Assistant Attorney General

Washington, D.C. 20530

DEC 8

Mr. Jonathon Moseley  
4125-B South Four Mile Run Drive  
Arlington, Virginia 22204

Dear Mr. Moseley:

This is in response to your recent letter, urging appointment of an independent counsel to investigate actions of the Office of Independent Counsel of Iran/Contra in its handling of the indictment returned against Caspar Weinberger on October 30, 1992. I note that you raise concerns about the timing of the indictment and the possibility of improper disclosure of the indictment to the Clinton/Gore campaign.

The provisions of the Independent Counsel Act, 28 U.S.C. §§ 591-599, apply only to certain high-level positions within the executive branch. An independent counsel appointed pursuant to the Act does not serve in a position covered by the Act. The Act does permit discretionary use of its procedures to conduct investigations of persons not otherwise covered by the statute, see 28 U.S.C. § 591(c), but that section only applies where there are sufficient grounds to warrant a preliminary investigation and when an investigation by the Department of Justice would result in a personal, financial or political conflict of interest. In this case, the Attorney General has concluded that no such conflict of interest would bar the Department of Justice from investigating allegations of illegal conduct on the part of an independent counsel should such an investigation otherwise be appropriate.

As you may know, it is the Department's policy not to confirm or deny whether a criminal investigation has been commenced or is ongoing. However, you can rest assured that the Department will carefully evaluate the allegations set forth in your letter.

I appreciate your bringing your views to my attention.

Sincerely,

Robert S. Mueller, III  
Assistant Attorney General

*(S) John C. Keeney*  
John C. Keeney  
Deputy Assistant Attorney General

FOIA # 60048 (URTS 16457) DocId: 70106670 Page 27

Criminal Division

NARA-18-1003-A-002365



November 9, 1992

William Barr  
Attorney General  
United States Department of Justice  
Washington, D.C. 20530

'92 NOV -9 P5:13

EXECUTIVE SECRETARIAT

Honorable Attorney General:

I want to urge you to appoint a special prosecutor to resolve questions surrounding Lawrence Walsh's alleged leaking of a highly sensitive indictment and possible collusion with one of the Presidential campaigns.

Protecting the constitution and democracy (the oath of office for all government employees) makes this issue important regardless of party and regardless of individuals. The height of a hotly-contested election is a time when all officials should be especially sensitive to their responsibility to protect our democratic system. Even something innocent, done in flagrant disregard of our electoral process, can seriously undermine public confidence in the constitution and democracy.

"WATERGATE" taught the nation the importance of untainted elections and the gravity of public officials interfering in democracy through government power. But too often, history is easy to see clearly, while we miss what is happening right around us.

On October 29, was a version of "Watergate" relived before our eyes? Did "WATERGATE" just happen again? That day, the Clinton-Gore Campaign issued a press release about an indictment that had not yet been filed.

The following day, Special Prosecutor Lawrence Walsh filed that indictment against Weinberger, releasing a private note alleged to implicate the President in the Iran-Contra affair. Walsh had had that note for many months and there was no legal reason to release it in the middle of a hotly-contested election instead of waiting 4 days... other than politics.

Facts remain sketchy, but the full implications should be contemplated: Did Clinton-Gore and the Special Prosecutor conspire to attempt to 'throw' the election? If indeed there was collusion between the Clinton-Gore campaign and the Special Prosecutor, if Walsh's office leaked and fully explained the lengthy, detailed, complicated charges before filing the same, it would rival WATERGATE as an extremely serious political scandal.

(In fact, the only difference between WATERGATE and this would be the difference between physical breaking and entering and more



sophisticated 'white collar' crime. The pattern is otherwise surprisingly similar to "WATERGATE." Please reflect on that. What differences between the two could one suggest? Very few. What exactly are those differences?)

The timing of Lawrence Walsh's release of a note allegedly implicating the President of the United States, just 4 days before the nation's Presidential election, is serious. A prosecutor is required by professional codes and rules to refrain from acting in such a situation. Acts of commission are barred, but restraint is also required in such cases, when delay is feasible. At a very minimum, it appears Walsh violated his ethical responsibility.

Even if the Clinton-Gore campaign accidentally dated their release with the wrong date, one still needs to inquire further: How could it be that they could sift through a complicated, lengthy indictment to distill out the facts in time to send out a press release simultaneously with the filing of the indictment. We know their campaign was fast. But instantaneous raises some serious questions. Without a "heads up," it would take time simply to go to the courthouse, pick up a copy, and read it.

The Bush Administration is urged to appoint a Special Prosecutor to investigate Lawrence Walsh. This URGENT PETITION to the Bush Administration is absolutely essential to the maintenance of the fragile democracy birthed in America not so long ago.

Appointment of a Special Prosecutor means finding out the facts. It does not mean that we know what happened. It does not mean that the Administration is taking ANY position. It only means that there are questions serious enough to warrant proper investigation. An independent review is needed. The ONLY proper response is to say "Let's take a look and find out what really happened." No one should jump to any conclusions or cast blame until we know with confidence what the facts really are.

The existence of those questions is a serious blemish on our constitutional system. Even if ultimately not true, leaving those questions unresolved would cause far more damage to the public's confidence in their democratic institutions than an investigation that ultimately turns up nothing. Letting these questions fester would be by far the worst of all worlds.

The alleged tampering of a Presidential election by a Special Prosecutor involves the sort of abuse of the electoral process that one normally associates with third world countries and banana republics, barely within the democratic world. To think of the world's leading democracy, suffering such electoral abuse shocks the conscience and truly shakes our confidence in America's system. These questions must be answered. If not true, we can sleep easier as American citizens.

A proper investigation is the only honorable and appropriate answer to these concerns. A special prosecutor is the preferred



method that our government has developed as a solution in just these sorts of situations. That solution should be employed in this case.

But action will need to be quick. The current statutory authority to appoint a special prosecutor ends December 15.

Sincerely,  
Jonathon Moseley  
4125-B South Four Mile Run Drive  
Arlington, Virginia 22204  
(202) 310-3264



DEPARTMENT OF JUSTICE  
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: ASHE, VICTOR, MAYOR, KNOXVILLE, TN  
To: AG. ODD: 10-16-92  
Date Received: 10-01-92 Date Due: 10-16-92 Control #: X92100214567  
Subject & Date

09-28-92 LETTER INQUIRING AS TO WHETHER OR NOT SPECIAL  
INVESTIGATOR LAWRENCE WALSH AND HIS ASSISTANT, CRAIG GILLEN,  
HAVE VIOLATED FEDERAL LAW. IT IS HIS UNDERSTANDING THAT THE  
AG RECEIVED SUCH A REQUEST FROM 75 MEMBERS OF CONGRESS, AND  
HE FEELS THE AG'S OFFICE HAS EVERY OBLIGATION TO LOOK INTO  
THIS MATTER.

SEE EXEC. SEC. 92081011956 CONTROL SHEET ATTACHED.

Referred To:	Date:	Referred To:	Date:	
(1) CRM;MUELLER	10-02-92	(5)		W/IN:
(2)		(6)		
(3)		(7)		PRTY:
(4)		(8)		1Z
INTERIM BY:		DATE:		OPR:
Sig. For: CRM		Date Released: 10-27-92		EHZ

Remarks

INFO CC: OAG, DAG, OPC/OLS.  
(1) RETURN CONTROL SHEET W/COPY OF SIGNED AND DATED RESPONSE  
TO EXEC. SEC., ROOM 4400-AA.  
10-27-92 CRM REPLIED BY LETTER DATED 10-26-92. (TJ)

Other Remarks:

FILE: INDEPENDENT COUNSEL/WALSH, LAWRENCE E

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY  
\*\*\*\*\*

28 SEP 92





U.S. Department of Justice

Criminal Division

Office of the Assistant Attorney General

Washington, D.C. 20530

OCT 26 1992

The Honorable Victor Ashe  
Mayor of Knoxville  
400 Main Avenue  
Post Office Box 1631  
Knoxville, Tennessee 37901

Dear Mayor Ashe:

This is in response to your letter to Attorney General William Barr concerning the congressional request for the appointment of an Independent Counsel to investigate Independent Counsel Lawrence Walsh and his Deputy Craig Gillen. Because neither individual identified by Congress is covered by the Ethics in Government Act, the congressional request does not provide a basis for the appointment for an Independent Counsel.

Thank you for bringing your views to our attention.

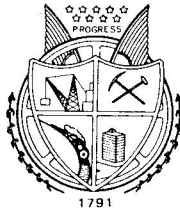
Sincerely,

Robert S. Mueller, III  
Assistant Attorney General

cc/ John C. Keeney

John C. Keeney  
Deputy Assistant Attorney General  
Criminal Division





THE CITY OF KNOXVILLE, TENNESSEE

VICTOR ASHE  
MAYOR

'92 OCT -1 P3:45  
EXECUTIVE SECRET

September 28, 1992

Honorable William P. Barr  
United States Attorney General  
Washington, D. C. 20530

Dear General Barr:

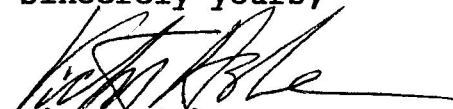
I am writing to make an inquiry as to whether or not Special Investigator Lawrence Walsh and his assistant, Craig Gillen, have violated federal criminal law.

It is my understanding that you received such a request from 75 Members of Congress.

It seems to me that your office, now that this has been brought to your attention, has every obligation to look into it. If in fact Mr. Walsh and Mr. Gillen lived in the City of Washington for 183 or more days during a calendar year, it seems to me

I look forward to seeing what your office will do.

Sincerely yours,



Victor Ashe



DEPARTMENT OF JUSTICE  
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: WALSH, LAWRENCE E., INDEPENDENT COUNSEL, WASH., D.C.  
To: AG. ODD: NONE  
Date Received: 09-17-92 Date Due: NONE Control #: X92091713803

Subject & Date

09-17-92 LETTER (REC'D FROM OAG) INFORMING THE AG THAT THEIR ACTIVE INVESTIGATION HAS BEEN COMPLETED, AND IN THE ABSENCE OF SOME NEW DEVELOPMENT, THEY DO NOT EXPECT TO PRESENT ANY FURTHER MATTERS TO THE GRAND JURY. ADVISES THAT WHILE THEIR REMAINING THREE CASES ARE BEING TRIED, HE WILL COMPLETE HIS FINAL REPORT TO THE SPECIAL DIVISION THAT ORIGINALLY APPOINTED HIM INDEPENDENT COUNSEL. THEY WILL BE READY TO FILE THIS FINAL REPORT PROMPTLY WHEN IT CAN BE DONE \*\*

	Referred To:	Date:	Referred To:	Date:	
(1)	CRM;MUELLER	09-17-92	(5)		W/IN:
(2)			(6)		
(3)			(7)		PRTY:
(4)			(8)		1S
	INTERIM BY:		DATE:		OPR:
	Sig. For: CRM		Date Released:		EHZ

Remarks

\*\* WITHOUT AFFECTING THE PENDING TRIALS. ENCLOSURES A COPY OF HIS LETTER TO THE PRESIDING JUDGE OF THE SPECIAL DIVISION.

INFO CC: OAG, DAG, ASG.

(1) FOR APPROPRIATE HANDLING. ADVISE EXEC. SEC. OF ANY ACTION TAKEN.

Other Remarks:

OLA CONTACT:

FILE: INDEPENDENT COUNSEL/WALSH, LAWRENCE E

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY  
\*\*\*\*\*

17 SEPTEMBER 92



OFFICE OF INDEPENDENT COUNSEL  
SUITE 701 WEST  
555 THIRTEENTH STREET, N.W.  
WASHINGTON, D.C. 20004 '92 SEP 17 P2 50  
(202) 383-8940

EXECUTIVE SECRET

September 17, 1992

BY HAND

The Honorable William P. Barr  
Attorney General  
U.S. Department of Justice  
10th Street and Constitution Avenue, N.W.  
Washington, D.C. 20530

Dear Mr. Attorney General:

On March 5, 1987, Attorney General Edwin Meese III appointed me Independent Counsel to conduct an investigation, and, where appropriate, prosecutions relating to crimes which might have been committed in connection with the Iran/Contra matter. His appointment paralleled an earlier appointment on December 19, 1986, by the Division for the Purpose of Appointing Independent Counsels of the United States Court of Appeals for the District of Columbia Circuit (the "Special Division").

The purpose of this letter is to inform you that our active investigation has been completed. In the absence of some new development, we do not expect to present any further matters to the grand jury.

There remain three cases for trial: United States v. Clair E. George, Criminal Nos. 91-0521 and 92-0215, United States v. Duane R. Clarridge, Criminal No. 91-0665, and United States v. Caspar W. Weinberger, Crim. No. 92-0235. The George case is scheduled for retrial on October 19, 1992. The Weinberger case is scheduled for trial January 5, 1993. In the Clarridge case, the defendant has just filed his motions to dismiss. Our responses are due on September 21, 1992. After these motions have been decided, we expect that a trial date will be fixed. We also will be filing in the next few weeks a petition for writ of certiorari in United States v. Poindexter, Criminal No. 88-0080-01, which was reversed and remanded last year by the Court of Appeals.

While these three cases are being tried, I shall complete work on my final report to the Special Division that originally appointed me as Independent Counsel. We will be ready to file this report promptly when it can be done without affecting the pending trials.



I enclose herewith a copy of a letter that I have today sent the Presiding Judge of the Special Division.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Lawrence E. Walsh".

Lawrence E. Walsh  
Independent Counsel

Enclosure



OFFICE OF INDEPENDENT COUNSEL  
SUITE 701 WEST  
555 THIRTEENTH STREET, N.W.  
WASHINGTON, D.C. 20004  
(202) 383-8940

September 17, 1992

The Honorable George E. MacKinnon  
Presiding Judge  
Division for the Purpose of  
Appointing Independent Counsels  
United States Court of Appeals  
District of Columbia Circuit  
3rd Street & Constitution Avenue, N.W.  
Washington, D.C. 20001

Dear Judge MacKinnon:

The purpose of this letter is to inform the Division for the Purpose of Appointing Independent Counsels that my Office has completed its active investigation into the Iran/Contra matters assigned to us by the Order of the Division, dated December 19, 1986. We do not expect to present any further matters to the grand jury, in the absence of some new development before we close our offices.

There remain three cases for trial: United States v. Clair E. George, Criminal Nos. 91-0521 and 92-0215, United States v. Duane R. Clarridge, Criminal No. 91-0665, and United States v. Caspar W. Weinberger, Crim. No. 92-0235. The George case is scheduled for retrial on October 19, 1992. The Weinberger case is scheduled for trial January 5, 1993. In the Clarridge case, the defendant has just filed his motions to dismiss. Our responses are due on September 21, 1992. After these motions have been decided, we expect that a trial date will be fixed. We also will be filing in the next few weeks a petition for writ of certiorari in United States v. Poindexter, Criminal No. 88-0080-01, which was reversed and remanded last year by the Court of Appeals.

While these three cases are being tried, I shall complete work on my final report to the Division. We will be ready to file this report promptly when it can be done without interfering with the pending trials.

Respectfully yours,



Lawrence E. Walsh  
Independent Counsel



C 10

DEPARTMENT OF JUSTICE  
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: LEVIANT, JACQUES, NEW YORK, NY

To: AG.

ODD: 09-23-92

Date Received: 09-08-92 Date Due: 09-23-92 Control #: X92090913365

Subject & Date

09-02-92 LETTER CONCERNING THE TIMELY AND COSTLY  
INVESTIGATIONS AND PROSECUTIONS BY SPECIAL PROSECUTOR  
LAWRENCE WALSH AND HIS STAFF. FEELS THIS OFFICE SHOULD  
BE ELIMINATED.

	Referred To:	Date:	Referred To:	Date:	
(1)	CRM;MUELLER	09-09-92	(5)		W/IN:
(2)			(6)		
(3)			(7)		PRTY:
(4)			(8)		1Z
	INTERIM BY:		DATE:		OPR:
	Sig. For: CRM		Date Released: 09-23-92		MAU

Remarks

INFO CC: OAG, DAG.

(1) RETURN CONTROL SHEET WITH COPY OF SIGNED AND DATED  
RESPONSE TO EXEC. SEC., ROOM 4400-AA.

09-23-92: CRM REPLIED ON 09-22-92. REQUESTED THAT  
CRM SEND A SIGNED COPY. (CYN)

09-28-92: CRM PROVIDED A "STAMPED" SIGNED COPY. (CYN)

Other Remarks:

OLA CONTACT:

9/9/92 1) TTR FYI; 2) GJT

FILE: INDEPENDENT COUNSEL/WALSH, LAWRENCE E.

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY  
\*\*\*\*\*

410 2 SEPTEMBER 92





U.S. Department of Justice

Criminal Division

Office of the Assistant Attorney General

Washington, D.C. 20530

SEP 22 1992

Mr. Jacques Leviant  
895 Park Avenue  
New York, New York 10805

Dear Mr. Leviant:

This is in response to your letter to the Attorney General regarding the Independent Counsel's investigation into matters concerning the sale of arms to Iran.

The Independent Counsel was appointed on December 19, 1986, by the Independent Counsel Division of the United States Court of Appeals for the District of Columbia Circuit. Pursuant to this appointment and corresponding federal law, the Department of Justice does not have supervisory authority over the investigation being conducted by the Independent Counsel.

The Attorney General appreciates the confidence which prompted you to write to him.

Sincerely,

Robert S. Mueller, III  
Assistant Attorney General

BY: ~~LA~~ John C. Keeney

John C. Keeney  
Deputy Assistant Attorney General



'92 SEP -8 10:32

September 2, 1992

EXECUTIVE SECRET

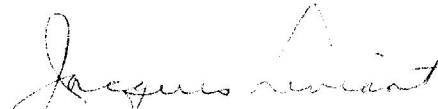
The Honorable William P. Barr  
U. S. Attorney General  
10th & Constitution Avenue, N.W.  
Washington, D. C. 20530

Dear Attorney General Barr:

The latest fiasco of Special Prosecutor Lawrence Walsh should really be the last straw. High-living Walsh and his staff, after spending \$40 million of the taxpayers' money and 5 years of futile investigations and prosecutions, has suffered another set-back.

The time has come to cut our losses and send this blundering idiot home.

Best regards.

  
Jacques Leviant





13 AUGUST 92

# LIMITED

# OFFICIAL

# USE

**The attached information must be protected and not released to unauthorized individuals. Use of this cover sheet is in accordance with the Department of Justice regulation on the control of Limited Official Use information.**



*closeout*

DEPARTMENT OF JUSTICE  
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: KEENEY, JOHN C., ACTING AAG, CRM  
To: ACTING AG (TERWILLIGER) ODD: 08-13-92  
Date Received: 08-13-92 Date Due: 08-13-92 Control #: X92081312162  
Subject & Date  
08-13-92 MEMO ATTACHING A PROPOSED LETTER TO JUDGE WALSH  
CONCERNING A RECENT SECURITY VIOLATION BY THE INDEPENDENT  
COUNSEL'S OFFICE; FOR DAG SIGNATURE AS ACTING AG.

	Referred To:	Date:		Referred To:	Date:	
(1)	DAG;TERWILLIGE	08-13-92	(5)			W/IN:
(2)			(6)			
(3)			(7)			PRTY:
(4)			(8)			1S
	INTERIM BY:			DATE:		OPR:
	Sig. For:	DAG		Date Released:	08-17-92	CYN

*C/O 13 August 92*

Remarks

INFO CC: OAG

(1) FOR DAG SIGNATURE AS ACTING AG.

LIMITED DISTRIBUTION.

08-17-92: LETTER WAS CHANGED BY CRM AND SIGNATURE BLOCK  
CHANGED TO REFLECT DAG RATHER THAN ACTING AG. CC PROVIDED  
TO EXEC. SEC. BY CRM. BJ

Other Remarks:

OLA CONTACT:

8/13/92 TTR FOR REVIEW

FILE: INDEPENDENT COUNSEL/WALSH, LAWRENCE E.

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY  
\*\*\*\*\*





Office of the Deputy Attorney General

Washington, D.C. 20530

August 14, 1992

**BY HAND**

The Honorable Lawrence E. Walsh  
Independent Counsel  
Office of Independent Counsel  
Suite 701 West  
555 Thirteenth Street, N.W.  
Washington, D.C. 20004

Dear Judge Walsh:

I write to advise you of the Department's serious concern about the recent security violation by your Office and to inform you of the steps being taken by this Department in response to that violation.

Although the details of the incident remain to be fully developed, my understanding is that you provided a folder of highly classified material, including codeword material, to one of your assistants to be transported from Los Angeles to Washington, D.C. That assistant placed the folder in a suitcase which he then checked with an airline at a curb side check-in station. At the conclusion of the assistant's flight to Dulles Airport, the suitcase was missing and has not subsequently been located.

As you know, there are strict rules relating to the transport of classified material, especially codeword documents. The flagrant violation of those rules which occurred in this instance is of particular concern in view of the prior security breaches by your Office, including one involving the transport of codeword material. Further, your Office's delay of more than two weeks in notifying this Department concerning the missing suitcase significantly diminishes the prospect that the FBI will be able to recover the classified material.


In response to this incident, the Department has initiated the following actions: The FBI has undertaken an investigation of the incident, including an intensive effort to locate the missing material. We expect personnel in your Office to cooperate fully with this investigation. The Department's Security Office is notifying the district court judges assigned to pending Iran-Contra cases of the possible compromise of



classified information which may be pertinent to their cases. It is also advising the House and Senate Intelligence Committees concerning the missing material. Finally, I have directed the Security Office to rebrief all members of your Office on the procedures for handling classified information.

As the FBI investigation progresses, the Department will consider the need for additional action. In the interim, I urge you to take immediate action to ensure that there are no further security violations by your Office.

Sincerely,



George J. Terwilliger, III  
Deputy Attorney General



## Action Memorandum

ATTORNEY GENERAL/DEPUTY ATTORNEY GENERAL/ASSOCIATE ATTORNEY GENERAL

<b>Subject</b> Security Violation by Iran-Contra Independent Counsel's Office	<b>Date</b>  JCK:JSR:cp #920010271 <b>AUG 13 1992</b>
--	---

**TO:** The Acting Attorney General

**FROM:** John C. Keeney  
Acting Assistant  
Attorney General  
Criminal Division

**Summary:** As we discussed yesterday,  
attached is a proposed letter to  
Judge Walsh concerning the security violation.

**Action Required:** Signature on Letter

**Due Date/Action Forcing Event:** ASAP -- 8/13/92 (Mr. Keeney talked with the Deputy Attorney General yesterday and he is expecting the package.)

**DOJ Coordination:** Division/Component and Views (attach comments if other than concurrence)

The proposed letter has been coordinated with the Department's  
Security Office.

<b>Concurrences:</b>	<b>DAG</b>	<b>ASG</b>	<b>OLC</b>	<b>OPD</b>	<b>OLA</b>	<b>PAO</b>	<b>JMD</b>
<b>Initials</b>		N/A	N/A	N/A	N/A	N/A	N/A
<b>Date</b>							

**External Coordination:** Agency and Views (attach comments if other than concurrence).

**Contact Point for Additional Information:** James S. Reynolds, 514-0849





Office of the Attorney General  
Washington, D. C. 20530

The Honorable Lawrence E. Walsh  
Independent Counsel  
Office of Independent Counsel  
Suite 701 West  
555 Thirteenth Street, N.W.  
Washington, D.C. 20004

Dear Judge Walsh:

I write to advise you of my serious concern about the recent security violation by your Office and to inform you of the steps being taken by this Department in response to that violation.

Although the details of the incident remain to be fully developed, my understanding is that you provided a folder of highly classified material, including codeword material, to one of your assistants to be transported from Los Angeles to Washington, D.C. That assistant placed the folder in a suitcase which he then checked with an airline at a curb side check-in station. At the conclusion of the assistant's flight to Dulles Airport, the suitcase was missing and has not subsequently been located.

As you know, there are strict rules relating to the transport of classified material, especially codeword documents. The flagrant violation of those rules which occurred in this instance is of particular concern in view of the prior security breaches by your Office, including one involving the transport of codeword material. Further, your Office's delay of more than two weeks in notifying this Department concerning the missing suitcase significantly diminishes the prospect that the FBI will be able to recover the classified material.

In response to this incident, the Department has initiated the following actions: The FBI has undertaken an investigation of the incident, including an intensive effort to locate the missing material. The Department's Security Office is notifying the district court judges assigned to pending Iran-Contra cases of the possible compromise of classified information which may be pertinent to their cases. It is also advising the House and Senate Intelligence Committees concerning the missing material. Finally, I have directed the Security Office to rebrief all members of your Office on the procedures for handling classified information.

LIMITED OFFICIAL USE

FOIA # 60048 (URTS 16457) DocId: 70106670 Page 46

NARA-18-1003-A-002384



As the FBI investigation progresses, the Department will consider the need for additional action, including a possible re-evaluation of the overall security arrangements for your Office. In the interim, I urge you to take immediate action to ensure that there are no further security violations by your Office.

Sincerely,

George J. Terwilliger, III  
Acting Attorney General

LIMITED OFFICIAL USE



DEPARTMENT OF JUSTICE  
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: SOLOMON, CONG. GERALD B. AND 60 OTHER MEMBERS  
To: AG. ODD: 08-17-92  
Date Received: 08-07-92 Date Due: 01-15-93 Control #: X92081011956  
Subject & Date  
08-06-92 LETTER (FAX COPY REC'D FROM OAG) EXPRESSING CONCERN  
BY THE UNRESTRAINED EXPENSE OF THE WALSH INVESTIGATION OF  
THE IRAN/CONTRA AFFAIR. REQUESTS THAT DOJ CONDUCT A  
PRELIMINARY INQUIRY UNDER 28 U.S.C. 591(c) TO DETERMINE IF  
THERE ARE GROUNDS TO INVESTIGATE WHETHER WALSH, OR OTHER  
EMPLOYEES OF THE INDEPENDENT COUNSEL'S OFFICE MAY HAVE  
VIOLATED FEDERAL CRIMINAL LAW.

	Referred To:	Date:		Referred To:	Date:	
(1)	CRM;MUELLER	08-10-92	(5)			W/IN:
(2)	OLA;RAWLS	09-04-92	(6)			
(3)			(7)			PRTY:
(4)			(8)			IS
	INTERIM BY:		DATE:			OPR:
	Sig. For: OLA		Date Released: 06-29-93			MLH

Remarks

INFO CC: OAG, OAG (STEVENS), DAG, OLA (DeSANCTIS).  
(1) PREPARE RESPONSE FOR AAG/OLA SIGNATURE AND RETURN TO  
EXEC SEC, WITH COPY OF INCOMING, FOR TRANSMITTAL TO OLA.  
08-10-93: ORIGINAL RECEIVED AND SENT TO AG FILES. (MLH)  
08-11-93: PER REQUEST FROM OAG/SCHALL COPY PROVIDED. (MMH)  
(2) CRM PREPARED (1) LETTER FOR SIGNATURE. ASKS IF THE  
OTHER (59) MEMBERS CAN BE CC'd. YEW (SEE E.S. 92100214567.)

Other Remarks:

10-19-92: OLA REQUESTED DD EXT. TO 11-19-92. YEW  
12-14-92: OLA/NANCY REQ. ONE MONTH EXTENSION. (MLH)  
06-29-93: PER OLA/KLUND, CLOSE, SIMILAR REQUEST FROM CONG'S  
HYDE & MICHEL TO CIA WAS COMMENTED ON BY CRM AND OK'd THE  
CIA'S LTR AS ACCURATE. CC: AG & LEGIS. FILES. (MLH)  
JOE DeSANCTIS (514-2111)  
8/11/92 AML FYI  
FILE: INDEPENDENT COUNSEL/WALSH LAWRENCE E

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY  
\*\*\*\*\*



GERALD B. SOLOMON

MEMBER OF CONGRESS  
24TH DISTRICT, NEW YORK  
ROOM 2265, RAYBURN BUILDING  
WASHINGTON, DC 20515-3224  
(202) 225-5614

GASLIGHT SQUARE  
SARATOGA SPRINGS, NY 12866  
(518) 587-9800

MEMBER  
HOUSE TASK FORCE ON AMERICAN  
PRISONERS OF WAR AND  
MISSING IN SOUTHEAST ASIA

RULES COMMITTEE  
RANKING REPUBLICAN

MEMBER  
HOUSE TASK FORCE ON  
CHILD CARE, DRUGS,  
EDUCATION AND THE ELDERLY

ASSISTANT FLOOR WHIP

# Congress of the United States

House of Representatives

Washington, DC 20515-3224

August 6, 1992

Honorable William Barr  
Attorney General  
Department of Justice  
Washington, D.C.

Dear Attorney General Barr:

Many Members of Congress are concerned by the unrestrained expense of the Walsh investigation of the Iran/Contra affair. Recently, during a review of these expenses, it was discovered that Judge Lawrence E. Walsh and his deputy Craig A. Gillen have collected hundreds of thousands of dollars in travel and subsistence allowances for expenses incurred while living and working in Washington, D.C.

The review discovered that Walsh and Gillen receive travel and living expenses on the basis of Walsh's claim that his official duty station is in Oklahoma City and Gillen's claim that his is in Atlanta. These claimed duty stations are contrary to documentation that both Walsh and Gillen have in fact been employed full-time at the Counsel's Washington office for several years. The Independent Counsel has no office in Atlanta and its Oklahoma City office is just a "part-time" one staffed by a secretary who comes in only when Judge Walsh is in that city. Comptroller General decisions over the past 60 years have held that a federal employee's duty station is determined by the facts and not by administrative fiat, and that the duty station is determined by where the employee is expected to spend a greater part of his time. The records indicate that both Walsh and Gillen have worked almost exclusively in the Washington office.

In view of these Comptroller General decisions, we ask that you review these matters and determine what steps, if any, should be taken to recover any sums improperly paid to Judge Walsh and Craig Gillen.

We also ask that you compare time and attendance reports with the travel records and determine whether Walsh and Gillen complied with federal law and regulations for time and attendance reports. Travel records indicate that Gillen, for instance, commutes to Washington from Atlanta and arrives at his office a couple hours late on Mondays and leaves the office in the early afternoon on Fridays to return to Atlanta. If the commute between Washington

DISTRICT OFFICES

AMERICAN OVERSIGHT  
568 COLUMBIA TURNPIKE  
EAST GREENBUSH, NY 12061  
518-477-2703

FOIA # 60048 (URTS 16457) DocId: 70106670 Page 49

RHINEBECK, NY 12572  
914-876-2200

HUDSON, NY 12534  
518-828-0181

21 BAY STREET  
GLENS FALLS, NY 12801  
NARA-18-1003-A-002387



and Atlanta is personal rather than official travel, then the 6 hours per week that he was absent from his office while commuting to Atlanta properly should have been charged to annual leave. Since January 1990, Gillen may have been paid for about 800 hours (or approximately \$40,000) for leave taken but not recorded. Prompt resolution of this possible overpayment should be sought.

In addition, the review uncovered that Walsh and Gillen stay at the Watergate Hotel at room rates substantially below those available to other federal employees or the general public staying for extended stays at the hotel. In response to a phone inquiry to the hotel sales office, the lowest rate quoted for a federal employee who would stay for several months was \$60 a night more than Walsh or Gillen are paying.

We also ask that you review Walsh's and Gillen's arrangements at the Watergate Hotel to determine whether this constitutes a prohibited gift, gratuity or salary supplement. If so, you should consider instructing them to immediately return the gifts, gratuities or salary supplements by reimbursing the hotel for the special \$60 per night discount they have enjoyed over the past several years.

Travel records also appear to indicate that both Walsh and Gillen resided in Washington at the Watergate Hotel for over 183 days a year for the past several years, and are thus expected to have D.C. income taxes withheld, to file a tax return, and to otherwise comply with the tax laws of the District of Columbia. That an individual claims an out-of-town duty station or lives in a hotel does not exempt him from his income tax responsibilities to the D.C. Government. We are reliably informed that neither Walsh nor Gillen has complied with their obligation to pay income taxes to the D.C. Government. In addition, under federal law money received for living expenses at the taxpayer's principal place of employment is taxable income while the expenses incurred are not deductible.

While administrative actions can be taken if your review determines that they are necessary to bring these matters into full compliance with federal regulations and law,, there are two further matters that must be resolved.

First, these irregularities and failures to comply with the law raise questions about whether Walsh and Gillen have met the stringent standards of personal and professional integrity expected of federal prosecutors. We ask that you review their conduct in office and determine whether it has met the standards set for federal prosecutors. If they have not met those standards, we believe you should consider removing them from federal office for cause.

Second, it is possible that a formal Department of Justice inquiry into the conduct described above could conclude that federal criminal laws, including those governing the income tax



obligations of persons residing in the District of Columbia, have been violated. We ask that you conduct a preliminary inquiry under 28 USC 591(c) to determine whether there are grounds to investigate whether Walsh, Gillen or other employees of the Independent Counsel's office may have violated federal criminal law.

Sincerely,

Jon S. Brown

David D. Davis

James H. Quinn W. H. Ewen

Danny Beentjes

John Miller

Ed Laporte

John J. Gurnea

Clyde C. Holloman

Deane Gilman

Pat Walker

Paul Jones



David

Cliff Sears

Bill Linn

Jim Linn

Tom Lewis

Susan Macinori

Reef

Tom Doherty

Ray Hume

HM Rogers

Mike Bilant's

Carl Wall

Sam Roman

Fred Lyle



Dan Burton

Pat Roberts

Charyl

Bob Michel

James & Kephner

J. P. Aton

Frank Lloyd

Ed King

Arvis Cox

Dana Rohrabacher

Jeimy Edwards

Becky

Dennis Hastert

New Myrt

Charles H. Taylor

Wally Hergen



Ken Hancock

Ben McCallum

Jerry Lewis

Jeff Miller

Tim Pruden

Joel Hefley

Scott Lujan

Phil Stoney

Tom Bliley

Bill Branford

Tommy L. Long

Newt Gingrich

Quentin Hunter

Chuck Wicks

Jim Bohannon

James V. Hansen

Joe Barton

Greg D. Hyatt



Andy Ireland

de mbande

BR Livingston

Frank

Frank A. Frank

Frank

John A. Beck

John R. Beck

Robert H. Dornan

Paul E. Ireland

Don Backlund

Elk Halleg

John T. Pordille

Herbert Bateman

Norman L. Lee

Orge W. Oakes



DEPARTMENT OF JUSTICE  
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: WALSH, LAWRENCE E., OFFICE OF INDEPENDENT COUNSEL, WASH., DC  
To: AG. ODD: 03-09-92  
Date Received: 02-24-92 Date Due: 03-09-92 Control #: X92022403079  
Subject & Date

02-21-92 LETTER, IN ACCORDANCE WITH THE ETHICS IN GOVT. ACT,  
REQUESTING THAT DOJ TAKE, AND HE AGREES THAT DOJ SHALL TAKE,  
ALL APPROPRIATE LEGAL ACTION WITH RESPECT TO THE INTEREST  
OF THE U.S. IN FUNDS CURRENTLY BLOCKED BY ORDER OF THE  
SWISS FEDERAL OFFICE FOR POLICE MATTERS AT THE REQUEST OF  
THE U.S. DURING DECEMBER OF 1986. THE FUNDS ARE PROPERTY OF  
THE U.S. THAT HAS BEEN CONVERTED TO THE USE OF CERTAIN  
INDIVIDUALS AND BUSINESS ENTITIES INVOLVED IN THE \*\*

	Referred To:	Date:	Referred To:	Date:	
(1)	CRM;MUELLER	02-24-92	(5)		W/IN:
(2)			(6)		
(3)			(7)		PRTY:
(4)			(8)		1S
	INTERIM BY:		DATE:		OPR:
	Sig. For: CRM		Date Released: 07-30-92		MAU

Remarks

\*\* IRAN/CONTRA AFFAIR; WITH ENCLOSURES. (REC'D FROM OAG.)

INFO CC: OAG, DAG, OIA.

(1) RETURN THIS CONTROL SHEET WITH A COPY OF THE RESPONSE TO  
EXEC. SEC., ROOM 4400-AA.

(SEE EXEC. SEC. 92031904474)

07-30-92. CRM REPLIED BY LETTER DATED 05-18-92. COPY

Other Remarks:

TO AG FILES. (LH)

OLA CONTACT:

MWC 02-24-92

✓ FILE: INDEPENDENT COUNSEL/WALSH, LAWRENCE E

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY  
\*\*\*\*\*

C/O 21 Feb 92





U.S. Department of Justice

Criminal Division

920004033

Deputy Assistant Attorney General

Washington, D.C. 20530

MAY 18 1992

Judge Lawrence E. Walsh  
Independent Counsel  
Office of Independent Counsel  
555 13th Street, N.W.  
Suite 701 West  
Washington, D.C. 20001

Dear Judge Walsh:

Enclosed herewith for your consideration and any action you deem appropriate is a copy of a criminal referral we just received from the General Counsel of the Army concerning a former defense attache stationed in Nicaragua and Costa Rica. As you will note, the referral reflects that, in addition to other potential offenses, the subject may have misled congressional staff members concerning his knowledge of the Iran-Contra affair.

We are referring the potential embezzlement and mishandling of classified information aspects of the matter to our Public Integrity and Internal Security Sections for their consideration. You may wish to coordinate your review with representatives of those Sections.

Sincerely,

Mark M Richard  
Deputy Assistant Attorney General

Enclosure





DEPARTMENT OF THE ARMY  
OFFICE OF THE GENERAL COUNSEL  
WASHINGTON, DC 20310-0104



May 15, 1992

Mr. Mark M. Richard  
Deputy Assistant Attorney General,  
Criminal Division  
United States Department of Justice  
10th St. & Constitution Ave., N.W.  
Washington, DC 20530

Dear Mr. Richard:

The Department of the Army is in possession of facts which tend to indicate that one of its former employees who was involved in intelligence activities also may have committed certain federal crimes. This report is pursuant to Part VII of the 1982 Memorandum of Agreement between the Department of Justice and the Department of Defense governing the reporting and use of information concerning Federal crimes.

The former employee, Colonel (Retired) John G. Lent, served as a defense attache in Nicaragua and Costa Rica between 1983 and 1990. During this time, Lent may have made improper use of "emergency and extraordinary" funds belonging to the United States government. The entire amount of funds involved has not been determined; however, Lent has voluntarily repaid the United States Government a total of \$9,570.00. Lent also may have misled congressional staff members concerning his knowledge of the Iran-Contra affair. Finally, he may have mishandled classified information and both embellished and withheld information from official reports he submitted.

Due to an administrative error, Lent was allowed to retire from the Army prior to the resolution of the allegations against him. The Army has determined that these accusations do not constitute the "extraordinary circumstances" required by Army regulations to recall Lent to active duty for prosecutorial purposes.

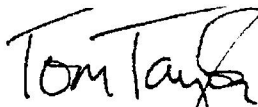
However, we feel that the alleged offenses are serious enough to dictate referral to your office for a determination as to whether further prosecution is warranted. To aid you in this determination, we have



enclosed a memorandum from the Office of the Judge Advocate General of the Army. We have also forwarded the classified investigative file.

My office's point-of-contact is Whit Cobb, who may be reached at 703/697-8029. Thank you for your attention to this matter.

Sincerely,



Thomas W. Taylor  
Deputy General Counsel  
(Installations & Operations)

Enclosures





REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
OFFICE OF THE JUDGE ADVOCATE GENERAL  
WASHINGTON, DC 20310-2200



10 FEB 1992

DAJA-ZD (27-1a)

MEMORANDUM FOR Office of the General Counsel of the Army, ATTN:  
SAGC (Mr. Taylor)

SUBJECT: Defense Attache Misconduct - Lent

1. The Criminal Law Division of the Office of the Judge Advocate General has completed a review of the Defense Intelligence Agency's investigation into alleged misconduct committed by COL Lent while serving as an attache. I agree with the Criminal Law Division's assessment of the case that COL Lent not be court-martialed. Enclosed is a copy of that review.

2. I am forwarding the entire file to your office for any action you deem appropriate. Because it appears that COL Lent may have misled the Congress you may want to coordinate the matter with the Department of Justice.

Encl

Thomas R. Cuthbert  
Brigadier General, USA  
Assistant Judge Advocate General  
for Military Law and Operations





DEPARTMENT OF THE ARMY  
OFFICE OF THE JUDGE ADVOCATE GENERAL  
WASHINGTON, DC 20310-2200



REPLY TO  
ATTENTION OF

DAJA-CL 1992/4021 (27)

10 February 1992

MEMORANDUM FOR ASSISTANT JUDGE ADVOCATE GENERAL FOR MILITARY  
LAW AND OPERATIONS

SUBJECT: Colonel (Retired) John G. Lent, 578-58-0177

1. This office has reviewed the investigation conducted by the Defense Intelligence Agency (DIA) concerning Colonel (Retired) John G. Lent. COL Lent retired from the Army in September 1990. He was able to retire in spite of the DIA investigation because the Army had not been informed of the investigation and, as a result, he was not "flagged."

2. Our review of the file indicates there is probable cause to believe that COL Lent committed the following offenses: violating a lawful general regulation (AR 380-5) and dereliction of duty (Article 92, UCMJ); making false official statements (Article 107, UCMJ); making false claims (Article 132, UCMJ); and, conduct unbecoming an officer (Article 133, UCMJ).

3. Most of the evidence in the report of investigation consists of statements by COL Lent. COL Lent submitted to several polygraph examinations. The first four tests revealed no deception indicated. The fifth test indicated deception regarding his misuse of emergency and extraordinary (E&E) funds. He then provided specific admissions about this misuse. His statements included the following:

a. COL Lent admitted that he falsified his official emergency and extraordinary (E&E) fund accounts in Nicaragua and Costa Rica. He did this by:

(1) Inflating his subvoucher guest list by adding the names of certain persons who were not actually present for the described social function. He referred to this as "ghosting."

(2) Inflating his claimed expenses by listing the cost of food and beverages at the official exchange rate (10 colones to \$1), while he used local currency purchased on the black market (70 colones to \$1) to pay the commissary in colones.

(3) Submitting false claims against his E&E account to obligate money prior to the end of the fiscal year. He subsequently spent these funds for official functions during the next fiscal year.



(4) Using official funds to pay personal expenses. He could not recall any specific event, but stated that during his tour in Nicaragua, he saved virtually all his military pay and allowances by using E&E funds for personal subsistence. It appears that he adopted a similar lifestyle in Costa Rica.

(5) Failing to maintain a log or expense account. He simply determined his gross balance of E&E funds and claimed expenses to match whatever his balance indicated.

(6) Making and submitting false claims for events that never took place. He admitted doing this on numerous occasions, but contended he could not remember specifics. In addition, he stretched his reimbursable work beyond anything relating to official duties. Virtually every meal he ate was at government expense.

b. COL Lent admitted that he prepared sensitive official reports at his home which were later classified at the office.

c. COL Lent stated he may have "stepped across the line" by informing La Guardia of Costa Rica about Contra movements in Costa Rica, for the purpose of avoiding confrontations between the two groups. Assuming this information was classified, there is no evidence that the release of such information was authorized by proper authority.

d. COL Lent indicated that during his 1987 testimony before Senate committee staff members, he intentionally withheld substantive information regarding his knowledge of the Iran-Contra affair because he was not asked the right questions. This included information about specific locations of airstrips, and visits to Costa Rica by Admiral Poindexter, William Casey, and LTC North.

e. COL Lent admitted to embellishing official reports and fabricating sources of information. He claimed to be unable to remember specific examples.

f. COL Lent admitted that he decided not to report information concerning a raid by the Contras into Nicaragua just prior to the Nicaraguan elections. Seven civilians were reported to have been killed by the Contras during this raid. His rationale was that "Washington would overreact" and terminate aid and support to the Contras.



4. Despite these admissions, there are several problems associated with prosecuting this case by court-martial.

a. There is a five year statute of limitations on these offenses pursuant to Article 43, UCMJ. Certain offenses committed in 1987 will soon be barred from prosecution.

b. The report of investigation only indicates COL Lent's statements were taken "under the advisement of rights." This contention must be explored to determine if the investigators actually complied with Article 31b, UCMJ.

c. Because most of the evidence consists of admissions by COL Lent, any prosecution will not be successful without sufficient corroborating evidence. The investigative effort required to corroborate his admissions would be immense.

d. Regarding COL Lent's statement concerning his testimony to Senate committee staff members, there is insufficient evidence at this point to evaluate whether he either lied to the staff members or breached a duty to report all available information. That evidence would have to be developed by further investigation.

e. COL Lent's mission appeared to change over time. Confusion as to his chain of command and his operational mission/instructions will render any prosecution even more difficult.

f. The government will be subjected to a "greymail" defense with the specter of Iran-Contra constantly hanging over the trial.

5. While COL Lent is clearly subject to UCMJ jurisdiction, AR 27-10 provides that retirees will not be court-martialed "unless extraordinary circumstances are present."

a. Factors supporting a finding of extraordinary circumstances include:

(1) The offenses occurred while COL Lent was on active duty.

(2) The offenses were against the United States.

(3) The offenses bring discredit to the United States and the Officer Corps.



DAJA-CL 1992/4021 (27)

SUBJECT: Colonel (Retired) John G. Lent, 578-58-0177

b. Factors against a finding of extraordinary circumstances include:

(1) COL Lent was allowed to retire at a time when the government was on notice that misconduct had occurred.

(2) Jurisdiction for certain of these offenses may also reside in U.S. district court.

6. COL Lent could be recalled to active duty to facilitate the exercise of court-martial jurisdiction and, in my opinion, he would, eventually, be convicted. However the cost associated with the additional investigation required to prepare for a successful prosecution is prohibitive, and the release of extremely sensitive information that would accompany such a trial should be avoided. I recommend that COL Lent not be prosecuted by court-martial.



WARREN D. HALL, III  
Colonel, JA  
Chief, Criminal Law Division



RECEIVED  
DEPARTMENT OF JUSTICE  
OFFICE OF INDEPENDENT COUNSEL  
SUITE 701 WEST  
555 THIRTEENTH STREET, N.W.  
'92 FEB 24 P3:14 WASHINGTON, D.C. 20004  
(202) 383-8940

1 EQUIPMENT OF FIVE

February 21, 1992

BY HAND

The Honorable William P. Barr  
Attorney General  
U.S. Department of Justice  
10th and Constitution Avenue, N.W.  
Washington, D.C. 20530

Dear Mr. Attorney General:

In accordance with the Ethics in Government Act, I respectfully request that the Department of Justice take, and I agree that the Department of Justice shall take, all appropriate legal action with respect to the interest of the United States in funds currently blocked by order of the Swiss Federal Office for Police Matters at the request of the United States during December of 1986. The funds are property of the United States that has been converted to the use of certain individuals and business entities involved in the Iran/Contra affair.

The Office of Independent Counsel, under the authority of the Swiss-American Treaty on Mutual Assistance in Criminal Matters and with the much appreciated cooperation of the Department of Justice, Office of International Affairs, has, since the inception of this Office, dealt with return of the funds as part of the necessary cooperation between Switzerland and the United States in the investigation and prosecution of criminal matters arising from Iran/Contra. We have recently received advance notice that Switzerland will deny the request for return of the funds because this Office was forced to drop the criminal counts relating to the conversion of the funds due to the refusal of the Attorney General to permit the exposure of certain classified information at trial. A copy of the proposed Swiss decision, and an unofficial translation, are attached.

Unless the proposed Swiss decision can be altered by direct Government-to-Government contacts, it appears to mean that the only means available to the United States to recover the converted funds will be civil actions in



The Honorable William P. Barr  
February 21, 1992  
Page 2

Switzerland, in the United States, or both. While we believe that this Office has jurisdiction to pursue necessary civil actions to obtain return of the funds, there should be no conflict of interest or appearance of conflict of interest that makes participation by Independent Counsel necessary. In light of the prospect of protracted civil litigation, the interest of the United States would be best served if the Department of Justice pursues this matter from this point forward.

Richard Owens, of the Office of International Affairs, is already familiar with this matter in his capacity as the Central Authority dealing with the Mutual Assistance treaty. The Office of Independent Counsel will provide other necessary liaison service for the Department of Justice to expedite its handling of this matter, and, to the extent legally allowable, as a matter to be pursued by the Internal Revenue Service.

Respectfully yours,



Lawrence E. Walsh  
Independent Counsel





Bundesamt für Polizeiwesen  
Office fédéral de la police  
Ufficio federale di polizia  
Uffizi federal da polizia

EINGEGANGEN

5. Feb. 1992

Erl. ....

3003 Bern. le 3 février 1992

☎ 031 / 61 4301  
Telefax 031 / 61 5380

Ihr Zeichen  
Votre ref  
Vostro ref

Unser Zeichen  
Notre ref  
Nostro ref

B 68 165 Gop/mo

Monsieur R.C. Owens  
Associate Director  
Office of International  
Affairs  
Criminal Division  
USA - Washington C.D. 20530

Demande d'entraide judiciaire américaine dans la cause NORTH  
Oliver et consorts. Demande complémentaire du 16 février  
1989. Remise de fonds.

Cher Monsieur Owens,

En date du 12 décembre 1986, vous nous avez adressé une demande d'entraide dans le cadre de l'enquête menée par le Conseiller indépendant (Independent Counsel) à l'encontre de M. Oliver North, Richard Secord et Albert Hakim. Il était reproché à ces personnes d'avoir détourné, à des fins personnelles ou autres, les bénéfices provenant de ventes d'armes américaines à l'Iran. La documentation bancaire requise vous a été remise fin 1987. Dans le cadre de l'exécution de la requête, nous avons également bloqués les comptes bancaires où les montants détournés auraient été déposés, ce en vue d'une restitution ultérieure en application de l'art.1 al. lit.b du Traité d'entraide en matière pénale conclu entre nos deux pays (le traité).

Le 16 février 1989, une requête supplémentaire tendant à la remise des fonds bloqués nous a été soumise. Quatre oppositions ont été formées à l'encontre de cette demande.

Nous vous avons fait part des problèmes juridiques qui s'opposaient à la remise des fonds (notre télécopie du 22 septembre 1989). L'Office du Conseiller indépendant (OCI) a alors tenté d'obtenir la restitution des fonds par la voie d'un arrangement civil (Civil agreement du 8 novembre 1989 avec M. Hakim). Cet accord n'est toutefois pas venu à chef (votre lettre non datée et reçue le 10 Août 1990, par laquelle vous nous avez transmis un courrier de l'OCI du 8 août 1990). Notre Office a alors tenté, sur votre demande, d'obtenir la remise des fonds en application de l'article 1 al.lit b du traité (notre lettre du 26 février 1991). Des précisions nous ont été fournies le 17 mai, 19 juillet et 8 août 1991.



2

Notre Office a procédé à un examen attentif de la situation. Il s'agissait en effet du premier cas de remise de fonds en application du traité et nous avons fait notre possible pour donner suite à votre demande. Notre conclusion est la suivante:

L'article 1 al.1 lit b du Traité prévoit que les parties contractantes s'engagent à s'accorder l'entraide judiciaire en vue de restituer à l'Etat requérant ou à un de ses Etats membres les objets et valeurs lui appartenant et provenant d'infraction dont la répression tombe sous la juridiction de l'Etat requérant.

Aux termes de l'art 1 al.2 du traité, est considérée comme infraction dans l'Etat requérant, au sens du Traité, tout acte dont on peut raisonnablement présumer (reasonable suspicion) qu'il a été commis et qu'il réunit les éléments constitutifs d'un acte punissable.

Le contenu de votre demande du 16 février 1989 et de ses compléments laissent apparaître qu'il n'existe actuellement plus de procédure pénale en cours aux USA pour les faits et contre les personnes qui ont fait l'objet de votre demande d'entraide initiale du 12 décembre 1986 et qui ont motivé le blocage des fonds en Suisse. Les chefs d'accusation relatifs au détournement de fonds publics ont en effet été abandonnés par le Conseiller Indépendant à l'encontre de MM.North, Hakim et Secord.

Même si, aux termes de la demande, ces faits ont permis l'inculpation des prénommés et que cette inculpation exige un standard de vraisemblance (probable cause), on ne saurait considérer qu'elles puissent être assimilées à des " infractions dont on peut vraisemblablement présumer qu'elles ont été commises" au sens de l'article 1 al.2 du Traité. La vraisemblance mentionnée dans cette disposition s'applique uniquement à des procédures en cours et tout spécialement celles qui en sont à leur début pour permettre, par la voie de l'entraide, de décider de la commission d'infractions qui sont poursuivies dans l'Etat requérant (cf.Technical Analysis of the Treaty, ad Article 1 Para.2).

Par ailleurs, la condamnation de la société Lake Ressources ne saurait être prise en compte, une personne morale ne pouvant être tenue responsable pénalement en droit suisse. Seules les personnes physiques qui la dirigent (Hakim, Secord) peuvent être condamnées.

Au vu de ce qui précède, il apparaît qu'une remise des fonds en application de l'art.1 al.1 lit b du Traité est exclue. Il en va de même d'une remise en application de la Loi fédérale sur l'entraide judiciaire en matière pénale (EIMP). L'article 74 al.2 EIMP permet la remise d'objets ou valeurs qui proviennent d'une infraction aux ayants droit même en



3

dehors de toute procédure pénale engagée dans l'Etat requérant. Le Tribunal fédéral suisse dans un arrêt récent a toutefois interprété cette disposition d'une manière très restrictive en limitant son application au cas de flagrant délit, soit lorsque la situation est absolument claire. Or tel n'est pas le cas en l'espèce au vu des imprécisions qui subsistent dans votre demande (notamment la question du salaire des courtiers (broker's fees)).

Si nous nous voyons contraints de refuser votre demande de remise de fonds, nous sommes cependant décidés à garantir la sauvegarde des intérêts du gouvernement américain. Nous allons donc maintenir le blocage des fonds jusqu'au 30 avril 1992 afin de permettre de récupérer ces fonds par la voie civile. Vous devez savoir que la saisie d'une partie des fonds a déjà été obtenue par des créanciers. Le maintien du blocage vous permettra de contester ces saisies devant les tribunaux genevois. Notons qu'en droit suisse, dans le cadre d'un procès pénal, le juge renvoie également la partie civile (lésé) à faire valoir ses droits devant les juridictions civiles lorsque quelques doutes subsistent quant aux prétentions de la partie civile.

Tout en regrettant, au vu des efforts déployés de part et d'autre, de ne pas pouvoir donner suite à votre demande nous vous adressons, cher Monsieur Owens, nos salutations les meilleures.

DEVISION DE L'ENTRAIDE JUDICIAIRE INTERNATIONALE  
ET DES AFFAIRES DE POLICE  
Office central USA

sig. Gossin  
Pascal Gossin



Copies:

- DFAE, DDIP, à l'att de MM, .Held et Gamma avec prière d'informer notre ambassade à Washington (Darier)
- Me Friedli, avocat, Berne  
Postfach 6233  
Bahnhofplatz 5  
3001 Berne





## U.S. Department of Justice

TELEFAX transmittal sheet/feuille d'accompagnement

Washington, DC 20530

DATE: February 5, 1992

TO/DESTINATAIRE: Mr. Greg Mark  
Associate I.C.

FROM/EXPEDITEUR: Andree Bogaerts *ASB*  
Paralegal  
OFFICE OF INTERNATIONAL AFFAIRS  
CRIMINAL DIVISION  
UNITED STATES DEPARTMENT OF JUSTICE  
Bureau des Affaires Internationales  
Division des Affaires Penales  
Departement de Justice des E.U.

SUBJECT/CONCERNE: Request to Switzerland for Assistance in the  
Matter of Oliver NORTH

## MESSAGE/REMARQUES:

Attached please find the unofficial translation from the French of the Swiss response to our request for assistance in the above-captioned matter.

Number of pages (including this one) 4 Sent by: asb  
Nombre des pages (y compris celle-ci) Transmis par:

Our/notre telefax number: 202-514-0080 (24 hour/automatique)  
Voice/voix: 202-514-0041 or/ou 202-514-0000



UNOFFICIAL TRANSLATION  
By Andree Bogaerts

February 3, 1992

Mr. Richard Owens  
Associate Director  
Office of International  
Affairs  
Criminal Division  
Washington, D. C. 20530

Request for Assistance in the Matter of Oliver North, et al.  
Supplemental Request dated February 16, 1989. Return of Assets.

Dear Mr. Owens,

On December 12, 1986, you sent us a request for assistance in the context of an investigation conducted by the Independent Counsel against Oliver North, Richard Secord and Albert Hakim. It was alleged that these persons diverted funds, for their own personal benefit or for the benefit of others, the profits having been derived from the sale of American arms to Iran. The requested bank documents were provided to you at the end of 1987. In the context of executing the request, we also blocked bank accounts, where the allegedly embezzled funds were deposited, with the intention to return these funds, pursuant to Article 1(b) of the MLAT.

On the 16 of February, 1989, a supplemental request concerning the repatriation of the funds was submitted to us. Four oppositions were filed against this request.

We explained to you the juridical problems that were involved in the return of these assets. (our telefax dated September 22, 1989.) The Office of Independent Counsel had then attempted to obtain the return of funds civilly. (Civil Agreement with Mr. Hakim dated November 8, 1989.) This agreement has not yet been concluded. (your undated letter received August 10, 1990, by which you transmitted correspondence from the OCI dated August 8, 1990.) Our Office then attempted, pursuant to your request, to obtain the return of funds by applying Article 1(b) of the MLAT (our letter dated February 26, 1991.) Specifications were provided on May 17, July 19, and August 8, 1991.

Our office carefully reviewed the situation. - The matter involved the first request for the return of assets in application of the Treaty. We therefore did all that was possible to execute your request. Our conclusion is the following:

Article 1(1)(b) of the Treaty foresees that the contracting



parties undertake to provide judicial assistance in effecting the return, to the requesting party or to one of its member states, the objects and assets belonging to it and stemming from offenses that fall under the jurisdiction of the requesting authority.

According to the terms of Article 1(2) of the Treaty, an offense in the requesting State is deemed to have been committed if there exists in that State a reasonable suspicion that acts have been committed which constitute the elements of that offense. The content of your request dated February 16, 1989, and of its follow-ups appears to show that currently there exists no criminal proceeding in the U.S. based on the facts and against the people that are the object of your initial request dated December 12, 1986, and which led to the freezing of funds in Switzerland. The charges related to the embezzlement of public funds were in fact dropped by Independent Counsel against Mr. North, Hakim and Secord.

Even if, in terms of the request, these facts permitted the indictment of the above-named persons and that this required a showing of probable cause, we cannot find this comparable to the "offenses for which there is reasonable suspicion that they have been committed" within the meaning of Article 1(2) of the Treaty. The "reasonableness" in this context applies to proceedings that are currently underway and especially those that are at their beginning stage in order to permit, through judicial assistance, the requesting Party to determine whether in fact an offense has been committed. (Technical Analysis of the Treaty, Art.1(2))

Moreover, the condemnation of Lake Ressources would not be possible, because under Swiss law, a "moral" (legal?) person cannot be held criminally responsible. Only the physical persons that manage it (Hakim, Secord) can be condemned.

In light of the above-mentioned, it appears that a return of assets, pursuant to Article 1(1)(b) is not possible. The same applies for a return based on the application of the Federal Law on Judicial Assistance in Criminal Matters.(EIMP) Article 74(b) allows the return of objects or assets that are derived from an offense, to those entitled to it, without there being any penal proceedings underway in the requesting country. The Swiss Federal Tribunal, however, in a recent case interpreted this article very narrowly by limiting its application to cases of flagrant crimes, i.e. when the situation is extremely clear. This is not the case here, in light of the imprecisions in your request (namely the question of broker's fees.)

Even though we decline to assist you in your request for the return of assets, we nevertheless have decided to safeguard the interests of the American government. We will therefore maintain a freeze until April 30, 1992, in order to permit the recuperation of these funds civilly. As you know a portion of the assets has already been seized by creditors. The continuation of the freeze, will thus allow the U.S. to contest, before the Geneva tribunals, the seizure of the assets by the creditors. Please note that



under Swiss law, in the context of criminal proceedings, a judge can transfer a case to the jurisdiction of the civil courts, so that an injured party can seek redress there, when there exists some doubts as to the allegations of the civil party.

We regret, given all the efforts on both sides, not to be able to grant your request.

Sincerely,

Pascal Gossin



Screened by NARA (RD-F) 02-07-2019 FOIA #  
60048 (URTS 16457) DOCID: 70106672

1992

INDIAN AFFAIRS  
January Thru April 1992



DEPARTMENT OF JUSTICE  
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: MOYNIHAN, SENATOR DANIEL PATRICK

To: AG.

ODD: 06-04-92

Date Received: 05-06-92 Date Due: 06-04-92 Control #: X92050707108

Subject & Date

04-29-92 LETTER ON BEHALF OF DR. MARCHETA L. BIRCH,  
DIRECTOR, INTERNATIONAL RELATIONS MAJOR PROGRAM,  
CANISIUS COLLEGE, BUFFALO, NY, REGARDING A GROUP OF  
INDIVIDUALS WHO HAVE MADE A CONCRETE EFFORT TO BRING  
ABOUT THE REMOVAL OF TRADITIONAL GOVERNMENT ON THE  
TONAWANDA SENECA RESERVATION. ENCLOSURES.

SEE E.S. 92042006096, 92021202401 - COPIES ATTACHED.

	Referred To:	Date:	Referred To:	Date:	
(1)	EOA;MCWHORTER	05-07-92	(5)		W/IN:
(2)			(6)		
(3)			(7)		PRTY:
(4)			(8)		2
	INTERIM BY:		DATE:		OPR:
	Sig. For:	EOA	Date Released:	06-15-92	YVO

Remarks

CC: ENR, FBI.

ORIGINAL TO AG FILES.

(1) RETURN CONTROL SHEET WITH A SIGNED AND DATED  
COPY OF THE RESPONSE TO EXEC. SEC., ROOM 4400-AA.  
06-15-92. EOA RESPONDED BY LETTER DATED 06-08-92.  
COPY TO AG AND LEGISLATIVE FILES. (MAU)

Other Remarks:

✓ FILE: INDIAN AFFAIRS

*29 April 92*

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY  
\*\*\*\*\*



JUN 8 1992

The Honorable Daniel P. Moynihan  
United States Senator  
28 Church Street  
Guaranty Building  
Buffalo, New York 14202

Attention: Rosemary Rimboli

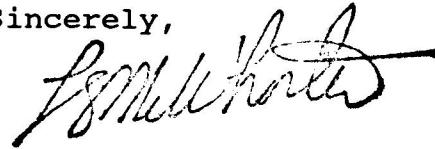
Dear Senator Moynihan:

I have been asked to respond to your letter of April 29, 1992 to Attorney General Barr concerning your correspondence from Dr. Marcheta Birch. On May 12, 1992, the United States Attorney for the Western District of New York wrote a reply to you directly addressing the concerns raised by your correspondent. For your convenience I am attaching a copy of his letter.

I took the liberty of forwarding a copy of your correspondence to the Honorable Philip Hogen, Director, Office of American Indian Trust, since the Bureau of Indian Affairs is involved. Mr. Hogen is the former United States Attorney for South Dakota and Chairman of the Indian Affairs Subcommittee of the Attorney General's Advisory Committee.

I hope this assists you in responding to your correspondent.

Sincerely,



Laurence S. McWhorter  
Director

Attachment

cc: Philip Hogen  
LSM:LDF:(n:senmoyn.ctd) 5/30/92  
bcc: LSM Chron  
CTD Chron  
Cong.Corr.Misc  
#92050707108  
#9200617  
file: cong. WD/NY





U.S. Department of Justice

United States Attorney  
Western District of New York

RECEIVED

JUN 08 1992

CRIMINAL DIVISION  
DATA UNIT

United States Courthouse  
Buffalo, New York 14202

May 12, 1992

Senator Daniel P. Moynihan  
Guaranty Building  
28 Church Street  
Suite 203  
Buffalo, New York 14202

Re: Tonawanda Band of Senecas

Dear Senator Moynihan:

I am responding to your letter to Attorney General Barr dated April 29, 1992, a copy of which is enclosed with its attachment. This office has responded promptly to any requests received from the Tribal Council of the Tonawanda Band of Senecas and will continue to do so. Initially, my office and the Federal Bureau of Investigation were contacted by Chief Parker concerning an alleged burglary of the tribal office on January 2, 1992. Agents of the FBI interviewed Chief Parker and requested additional information concerning the incident.

Thereafter, the Council voted to banish the five individuals as referenced in Dr. Birch's letter to you. Dr. Birch is correct that shots were fired when the Tribal Council tried to serve the banishment notices on the five individuals. The New York State Police responded and arrests were made. Those cases are now pending in the New York State Courts.

On February 18, 1992, members of my staff, including Criminal Chief Kathleen Mehltrittter, along with representatives of the Bureau of Indian Affairs and the New York State Police met with Chief Parker and other members of the tribe. At this meeting the issue of eviction was raised. George Big Eagle of the Bureau of Indian Affairs advised Chief Parker that New York State law provides a mechanism for eviction by way of request to the local district attorney. Suggestions were made that prior to seeking eviction, the council consider meeting with the interim general council to see if their differences could be resolved. The BIA offered to provide a neutral mediator. Chief Parker stated that the Council would decide what to do and advise us.

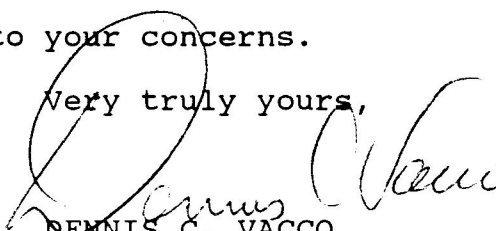


Since that meeting there has been no contact between our office and Chief Parker. I am advised by the Bureau of Indian Affairs that their offer of mediation was rejected. No request has been made of this office or the Genessee County District Attorney for eviction. You should be aware that the interim general council has banished Chief Parker. This may be the reason that Chief Parker has not sought to force eviction of the interim general council members. It is the Government's position that the determination of the legitimate leaders of the tribal council is an internal matter for the tribe.

I cannot address Dr. Birch's criticism of the media coverage concerning the controversy since this office has no control over any articles that appeared in the Buffalo News.

I trust this is responsive to your concerns.

Very truly yours,



DENNIS C. VACCO  
United States Attorney

DCV/ds  
Enc.

cc: Hon. William P. Barr  
Attorney General



## United States Senate

28 CHURCH STREET  
GUARANTY BUILDING  
BUFFALO, NEW YORK 14202

April 29, 1992

Mr. William Barr  
Attorney General  
United States Justice Department  
Main Justice Building  
10th Street and Constitution Avenue, S.W.  
Washington, D.C. 20530

Dear Mr. Barr:

The enclosed inquiry is from a constituent of mine,  
Dr. Marcheta Birch.

I would appreciate your careful consideration of these  
remarks, and your thoughts on what remedies there may be  
for this situation.

Please send me your written response in duplicate  
along with the letter from my constituent to:

Senator Daniel P. Moynihan  
Guaranty Building  
28 Church Street, Suite 203  
Buffalo, New York 14202  
ATTN: Rosemary Trimboli

Sincerely,



Daniel Patrick Moynihan





## CANISIUS COLLEGE

2001 MAIN STREET • BUFFALO, NEW YORK 14208-1098 • 716-883-7000

Senator Daniel P. Moynihan  
464 SROB  
Washington, DC 20510-3201

Friday, April 3, 1992

Dear Senator Moynihan:

I am writing to you because of your knowledge of, and experience with, international relations in general and international law in particular. I am contacting you and asking for your help. My involvement in the crisis detailed in the following paragraphs stems from a two year collaboration with Mr. Al Parker (younger brother of Bernard Parker, sachem of the Snipe Clan) to create the annual "Expanding the Circle" Conference and cultural event at Canisius College. Through our joint efforts, I had the opportunity to meet and work with several of the Seneca people at Tonawanda.

Because the crisis that my letter discusses is so serious, I am requesting that you come to the assistance of the Senecas by taking the following action. Please contact President George Bush; Mr. William Barr, United States Attorney General; Mr. William Webster, Director of the Federal Bureau of Investigation; and Ms. Kathleen M. Mehlretter, Criminal Justice Chief of the United States Attorney's Office. When you do, exhort them to comply with the request from the Council of Chiefs of the Tonawanda Band of Seneca to US federal government for assistance in removing the continued unlawful presence of five banished individuals from Seneca land. I have provided an account of the circumstances surrounding this crisis in the succeeding paragraphs and enclosed supporting documentation for your perusal.

The Senecas face a complex situation, and so this letter is rather lengthy. However, the details are necessary to provide you with all of the relevant information. The urgency of this matter can not be understated and will become apparent by the end of the letter.

The Tonawanda Band of Seneca is currently besieged by a number of related problems. A group, calling themselves the interim general council, has attempted to undermine, and now are trying to overthrow, the traditional democratic government embodied in the Council of Chiefs. The relationships between the Tonawanda Seneca, the people and government of New York and the United States government is being damaged by the actions of these individuals. Under normal circumstances the Council of Chiefs and the Seneca people would address these difficulties through established political mechanisms. However, external forces supporting this small faction have resulted in political and economic intervention in the internal affairs of a recognized sovereign nation.



Several federal and New York state offices have been contacted regarding this matter.

Five members of the interim general council were banished from the Tonawanda Band of Seneca on January 25, 1992. These individuals were stripped of their citizenship and rights as Senecas and were ordered to leave Seneca land forever. The banishment came at the request of the Seneca people at Tonawanda, and has not been undertaken for at least 70 - 80 years. The Council of Chiefs, over a period of several months, offered to discuss the issues with these individuals prior to their banishment. Their continued treasonous activity to undermine the Council of Chiefs left that governing body with no alternative but banishment. Thus, these five individuals are no longer considered to be people. When the banishment papers were delivered to Susan LaFromboise, she responded by discharging weapons toward the Council of Chiefs' delegation (which included her son), and into the air. More shots were fired by a second individual at the same time. A few weeks prior to this the five individuals, and others, forcibly entered the Tribal Office, vandalized it and stole tribal records. (This matter also has been brought to the attention of federal and state officials with unsatisfactory results.) Most importantly and problematical, the banished people have refused to leave Seneca land. These incidents by members of the interim general council clearly demonstrate their propensity for violence and unlawful acts.

The Tonawanda Band of Seneca, because they continue to honor treaty obligations with the United States, do not have any armed enforcement mechanism available to them. That vacuum is filled by the Canandaigua Treaty between the member nations of the Haudenosaunee (Iroquois Confederacy) and the United States. Specifically, Article 7 states that:

Lest the firm peace and friendship now established should be interrupted by the misconduct of individuals, the United States and the Six Nations agree, that for injuries done by individuals, on either side, no private revenge or retaliation shall take place; but, instead thereof, complaint shall be made by the party injured, to the other; by the Six Nations or any of them, to the President of the United States, or the superintendent by him appointed; and by the superintendent, or other persons appointed by the President, to the principal Chiefs of the Six Nations, or of the nation to which the offender belongs; and such prudent measures shall then be pursued, as shall be necessary to preserve our peace and friendship unbroken, until the Legislature (or Great Council) of the United States shall make other equitable provision for the purpose.

Note. It is clearly understood by the parties to this treaty, that the annuity stipulated in the sixth article, is to be applied to the benefit of the Six Nations, and of their Indian friends united with them, as aforesaid, as do or shall reside



within the boundaries of the United States; for the United States does not interfere with nations, tribes, or families of Indians, elsewhere resident.

International law, including codified, customary, and general principles, stipulates that the United States must adhere to the Canandaigua Treaty. First, all parties to a treaty are obligated to abide by the terms of that treaty; pacta sunt servanda applies. Second, the principle of rebus sic stantibus does not apply; parties to a treaty can not unilaterally declare it null and void. Finally, the Vienna Convention on Treaties, to which the United States also is a party, places these principles and related customary law firmly in codified law. The language of the Canandaigua Treaty clearly indicates that the United States is obligated, when officially asked by the Council of Chiefs, to assist them with "... such prudent measures ... as shall be necessary to preserve our peace and friendship unbroken...."

Under the terms of this treaty such a request has been made. The Council of Chiefs requested the assistance of the United States federal government to remove the banished individuals. While it is permissible for the federal government to use New York state government to achieve this end, the initial authorization must come from the United States federal government. The Canandaigua Treaty exists as a ratified document between two sovereign nation-states. It is in force in the realm of international law; not United States domestic law. To date the United States has not honored its obligations pertaining to this particular situation as stipulated by the Canandaigua Treaty.

While the banished individuals have unlawfully remained on Seneca land, they have been engaging in further disruptive activities. I am seriously concerned because the members of this group have undertaken several activities to attempt to discredit and to try and forcibly remove the Council of Chiefs. Most importantly, at the request of the banished individuals, Shirley Snyder, an executive secretary at the Bureau of Indian Affairs, has played a central role in an illegal attempt to depose Bernard Parker, sachem of the Snipe clan and Chairman of the Council of Chiefs. Thus, a current employee of the United States federal government has attempted to interfere unlawfully in the legitimate political processes of the Tonawanda Band of Seneca.

In this and other events, the interim general council has sought out and received the aid of at least one reporter of The Buffalo News. The Council of Chiefs is being portrayed in, at best, an inaccurate manner, and, at worst, a manner deliberately designed to dishonor and eliminate it. I have enclosed a packet of recent News articles; attached to them is a list of the errors in each article. In many instances the reporter, Agnes Palazetti, had information available to her which would have enabled her to write a more accurate and balanced article; she chose not to do so. The portrayal of innuendo, supposition, prejudices, personal idiosyncracies and biased information as supportable fact is, in fact, insupportable. Palazetti's conscious efforts to justify the disintegration of the legitimately recognized governmental structure of



the Tonawanda Seneca people indicates her willingness to intervene in, and attempt to shape, the internal political events of a nation. Because the editors chose to publish the articles, The Buffalo News is culpable in advocating and supporting the active elimination of a nation's government, and the political relationship between the Council of Chiefs and the governments of the United States and New York state. The interim general council, with the help of Palazetti and The Buffalo News, has manipulated the truth to exempt themselves from justice.

The Council of Chiefs is the only legitimate government of the Seneca people recognized by the Haudenosaunee (Iroquois Confederacy), New York state and the United States government. The current Council of Chiefs of the Tonawanda Band of Seneca is following a long history of chiefs who have refused to participate voluntarily in the sale of their lands, who have continued to regulate the internal affairs of their people under the original form of government, and who have continued to enforce the laws, practices, and customs of the Great Law of Peace of the Haudenosaunee.

In addition, the Haudenosaunee have made invaluable contributions to, and sacrifices for, the formation of the United States, its Constitution, and the resulting democratic structure of government. The indigenous peoples of this region have played a key role in providing a long established working democratic government upon which Franklin, Jefferson, Adams and Washington could theorize and rationalize the US democracy. The US government recognized the Haudenosaunee contributions in a recent Senate resolution.

If you would like any further information, please contact Chief Bernard Parker at (716) 542-9942, or Mr. Darwin Hill (Clerk of the Nation) at (716) 542-4600.

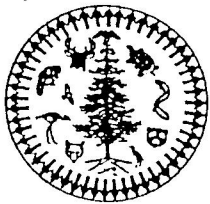
Simply, I believe that it is in everyone's best interest to rectify this situation. Your assistance with follow-up efforts in this matter, contacting President George Bush, Mr. William Barr, Mr. William Webster, and Ms. Kathleen M. Mehltritt to facilitate the removal of the banished individuals from Seneca land, is urgently needed.

Respectfully,



Dr. Marcheta L. Birch, Director  
International Relations  
Major Program





## HAUDENOSAUNEE

Tonawanda Band of Senecas

7027 MEADVILLE ROAD  
BASOM, NEW YORK 14013

February 14, 1992

TO: New York Legislators

The Tonawanda Band of Seneca Nation, Council of Chiefs, submit the attached information for your attention.

During the past several months a group of individuals has made a concerted effort to bring about the removal of the Traditional government at Tonawanda. General disregard for laws and rules has resulted in numerous community disturbances during this period, including at least one shooting incident.

In order to bring about a peaceful solution to this issue we have been in constant dialogue with the U.S. Bureau of Indian Affairs, Department of Justice (U.S. Attorney, Buffalo) and the New York State Police. Further meetings are scheduled in the coming week to coordinate plans to deal with this matter.

We believe that the New York legislators can be very effective in helping to bring peace back into our community. In fact, with our government to government relationship as established in treaties and other agreements, it is absolutely necessary for New York State to support our Tribal government and to help maintain law and order in our territories. Your assistance is therefore requested to insure that the appropriate agencies, including the newly formed Indian Relations Office, are active participants in a peaceful solution for our Nation.

We look forward to your prompt attention to this matter. Should you require additional information, please contact the Council of Chiefs at the above address or phone (716) 542-9942.

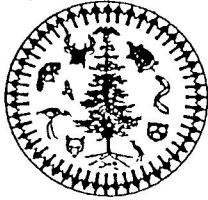
Sincerely,

*Chief Bernard Parker*

Chief Bernard Parker, Chairman  
Council of Chiefs

1992 APR 20 AM 11:16





## HAUDENOSAUNEE

Tonawanda Band of Senecas

7027 MEADVILLE ROAD  
BASOM, NEW YORK 14013  
Phone (716) 542-9942

HONNAHDAHGUYUSS

February 3, 1992

The Honorable George Bush  
President of the United States  
The White House  
Washington, DC 20500

Greetings Brother:

The Chiefs, clan-mothers, and the people of the Tonawanda Seneca Nation, members of the HAUDENOSAUNEE (Six Nations Confederacy), send greetings to you and your associates.

We are contacting you in regards to a matter of great concern for the people of the Tonawanda Seneca Nation, as well as our friends in all other communities.

In accordance with the 1794 Treaty of Canandaigua, a treaty between the newly formed United States of America and the Six Nations:

Article 7. Lest the firm peace and friendship now established should be interrupted by the misconduct of individuals, the United States and the Six Nations agree, that for injuries done by individuals, on either side, no private revenge or retaliation shall take place; but, instead thereof, complaint shall be made by the party injured, to the other; by the Six Nations or any one of them, to the President of the United States, or the superintendent by him appointed; and by the superintendent, or other person appointed by the President, to the principal chiefs of the Six Nations, or of the nation to which the offender belongs; and such prudent measures shall be pursued, as shall be necessary to preserve our peace and friendship unbroken, until the legislature (or great council) of the United States shall make other equitable provision for the purpose.

Mr. President, during the past several months, a group of individuals living on or near the Tonawanda Seneca Nation Territory, have engaged in various unlawful activities. These events are causing concern for peace within our community and require immediate attention.

Because of these unlawful activities, including their actions to overthrow, or otherwise bring about the removal of, the traditional government at the Tonawanda Seneca Nation, five (5) persons were convicted of TREASON and are now banished from our territory. After banishment (copy attached), these persons are no longer considered as Indian and must leave the territory.



Pursuant to Article 7. of the Canandaigua Treaty, we are now requesting that the President of the United States, or his designee:

1. Assist the Tonawanda Seneca Nation with the removal of these persons now living illegally within our territory.
2. Pursue any and all legal avenues necessary to investigate and prosecute those responsible for these activities.

In closing the Tonawanda Seneca Nation again extends its greetings to you and your leaders and we look forward to your prompt response to this matter.

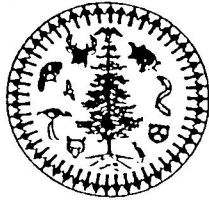
ONEH:

Tonawanda Band of Seneca Nation  
Council of Chiefs

*Harley Gordon*  
*Harley Gordon*  
*Harley Gordon*  
(92h-EN-TEH) Sub Chief Harley Gordon  
(Sach. sach. sach. sach.) Chief Dawn Linneman  
Sub-Chief James Logan

cc Senator Alfonse D'Amato  
Senator Daniel Patrick Moynahan  
Congresswoman Louise M. Slaughter  
Assistant Secretary Indian Affairs, Eddie Brown  
New York field office (BIA), Dean White  
Governor Mario M. Cuomo





**HAUDENOSAUNEE**

**Tonawanda Band of Senecas**  
7027 MEADVILLE ROAD  
BASOM, NEW YORK 14013

January 24, 1992

To: \_\_\_\_\_

It is with a great deal of sorrow that we inform you that you are now banished from the territories of the Tonawanda Band of the Seneca Nation. You are to leave now and never return.

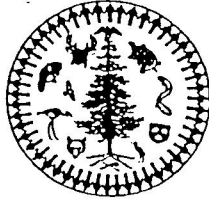
According to the customs and usage of the Tonawanda Band of Seneca Nation and the HAUDENOSAUNEE, no warnings are required before banishment for acts of murder, rape, or treason.

Your actions to overthrow, or otherwise bring about the removal of, the traditional government at the Tonawanda Band of Seneca Nation, and further by becoming a member of the Interim General Council, are considered treason. Therefore, banishment is required.

According to the customs and usage of the Tonawanda Band of Seneca Nation and the HAUDENOSAUNEE, your name is removed from the Tribal rolls, your Indian name is taken away, and your lands will become the responsibility of the Council of Chiefs. You are now stripped of your Indian citizenship and permanently lose any and all rights afforded our members.

YOU MUST LEAVE IMMEDIATELY AND WE WILL WALK WITH YOU TO THE OUTER BORDERS OF OUR TERRITORY.





## HAUDENOSAUNEE

Tonawanda Band of Senecas  
7027 MEADVILLE ROAD  
BASOM, NEW YORK 14013

FOIA(b)(6)

February 13, 1992

U.S. Department of the Interior  
Eddie Brown, Assistant Secretary, Indian Affairs  
MS-4140, MIB Room 4160  
1849 C Street, Northwest  
Washington, DC 20240

Greetings:

The Tonawanda Band of Seneca Nation, Council of Chiefs, hereby serves notice to your office or agency about a recent banishment proceeding conducted at our territory.

On January 24, 1992, the persons listed below were banished from our territories forever (BANISHMENT order, attached). Effective on that date these persons names were removed from our Tribal rolls and they were stripped of their Indian citizenship. They permanently lose any and all benefits and rights afforded our members by custom and tradition, and by other means such as through treaties, agreements or any other manner. They are no longer considered as Indian people in our communities but rather NON-INDIANS.

### PERSONS BANISHED:

1. Stonehorse Goeman (AKA: Stonehorse Lone) DOB:
2. Susan LaFromboise DOB:
3. David C. Peters DOB:
4. Peter L. Poodry DOB:
5. John A. Redeye DOB:

Should you require additional information on this matter, please contact the Tonawanda Band of Seneca Nation, Council of Chiefs, at the above address. Thank you for your prompt attention to this issue.

Sincerely,

Chief Bernard Parker, Chairman  
Council of Chiefs

cc: BIA, Eastern Area Office  
BIA, New York Liason  
Governor Mario Cuomo  
New York State, Department of Health  
New York State, State Education Department  
Tonawanda Indian Reservation, Health Clinic





IN REPLY REFER TO:

# United States Department of the Interior

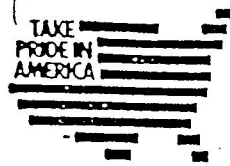
BUREAU OF INDIAN AFFAIRS

Eastern Area Office

Suite 260

3701 North Fairfax Drive

Arlington, Virginia 22203



Rights Protection

February 3, 1992

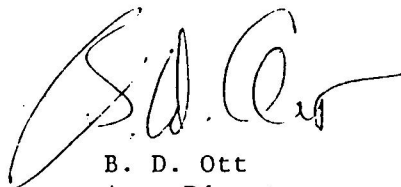
TO WHOM IT MAY CONCERN:

This letter serves to provide notice that the Bureau of Indian Affairs, Department of the Interior, recognizes the traditional Council of Chiefs as the legal governing body of the Tonawanda Band of the Seneca Nation. The Council of Chiefs is made up of the following persons:

Chief Bernard Parker, Chairman of the Council  
Chief Corbett Sundown  
Chief Kervin Jonathan  
Chief Emerson Webster  
Chief Roy Poodry  
Chief Darren Jimerson

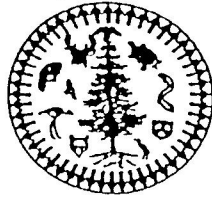
Sub-Chief Harley Gordon  
Sub-Chief James Logan  
Sub-Chief Frank Abrams

In addition, the Bureau of Indian Affairs acknowledges that Darwin Hill has been designated as the Clerk of the Tonawanda Council of Chiefs.



B. D. Ott  
Area Director





**HAUDENOSAUNEE**

**Tonawanda Band of Senecas**  
7027 MEADVILLE ROAD  
BASOM, NEW YORK 14013

January 17, 1992

Kathleen M. Mehltrittter  
Criminal Division Chief  
U.S. Attorney Office  
502 U.S. Courthouse  
Buffalo, New York 14202

Dear Ms Mehltrittter:

The Tonawanda Band of Senecas, Council of Chiefs, is contacting your office to make you aware of recent unlawful activities on the Tonawanda Seneca Nation territory. These events are causing concern for peace within our community and require immediate attention. We are specifically requesting assistance from your office because we believe that your direct involvement with this matter would be consistent with Federal Indian policy to both support and strengthen Tribal governments and to help maintain law and order on Indian reservations.

The Council of Chiefs hereby requests that the U.S. Attorney begin procedures to investigate and prosecute persons responsible for breaking into the Tonawanda Seneca Nation Tribal office on Thursday, January 2, 1992. During that illegal entry Tribal records and financial information was removed from the building and other important records were tampered with. According to advise from our Tribal attorneys, these acts are violations of Federal statutes 18 USC 1153 and 18 USC 1163. These statutes define both burglary on Indian reservations and theft of property from Tribal governments as Federal offenses. (Note: A full description of this event is attached)

In light of the recent disturbances on other Indian reservations in New York State, we are extremely concerned that failure to take appropriate actions will invite bolder activities by the persons involved and could result in further community disturbances and even violence. During recent discussions with agents from the local FBI office and the New York State police, we indicated that the group of persons involved with these activities poses a definite threat to overthrow the legal Tribal government at the Tonawanda Seneca Nation territory and must be dealt with immediately and decisively.



You should be aware that this situation did not develop overnight and that the Council of Chiefs has made serious efforts to meet with peoples to discuss issues of concern and to resolve any differences. However instead of waiting for further meetings and discussions, this group appeared as a force on December 27, 1991 and announced to one Chief at the Tribal office that they were taking over the building. Order was restored later that evening and nearly everyone seemed confident that a process was being developed that could begin to outline concerns and some possible solutions. But instead of waiting for the process to start, the group made the unlawful (forced) entry into the Tribal Headquarters as outlined in paragraph 2 of this letter. Additional activities, including telephone threats to one of the Chiefs and interference with routine Tribal business, have convinced the Council of Chiefs that it is absolutely essential to pursue legal actions to curtail this groups threats in our community.

Should you require additional information please contact the Council of Chiefs at the above address or any of the following by telephone:

Chief Bernard Parker	(716) 542-9942
Chief Emerson Webster	(716) 542-2816
Darwin Hill - Clerk	(716) 542-4600
Curtis Berkey, Esq	Indian Law Resource Center
	Washington, DC
	(202) 547-2800

Thank you for your attention on this matter and we look forward to your prompt response.

Sincerely,



Chief Bernard Parker  
Chairman, Council of Chiefs

cc: Senator Alfonse D'Amato  
Senator Daniel Patrick Moynahan  
Congresswoman Louise M. Slaughter  
Assistant Secretary Indian Affairs, Eddie Brown  
New York Field Office (BIA), Dean White  
Governor Mario M. Cuomo



ATTACHMENT

RE: Unlawful entry at Tribal office

DATE: January 2, 1992

LOCATION: Tonawanda Seneca Nation Office  
7027 Meadville Road  
Tonawanda Seneca Nation Territory  
via: Basom, NY 14013

FOIA(b)(6)  
FOIA(b)(7) - (C)

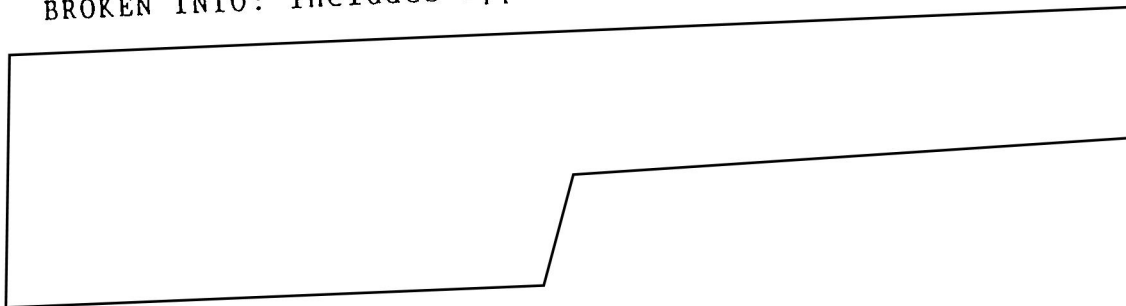
At approximately 7:30 PM several persons drove past the Tribal office building and noted that the inside lights were all on. They called several Chiefs and the Tribal clerk and asked if a meeting was taking place. After being told that no meeting was scheduled for that night, the witnesses drove by the offices several times to determine the persons present. (list below)

The New York State police was called and responded with two officers including an investigator. By the time of their arrival about 9:30 PM, everyone had vacated the office and the door locksets had been removed and deadbolts installed. Because of the late hour it was decided that entry would not be made then to determine if Tribal records or property were removed or destroyed.

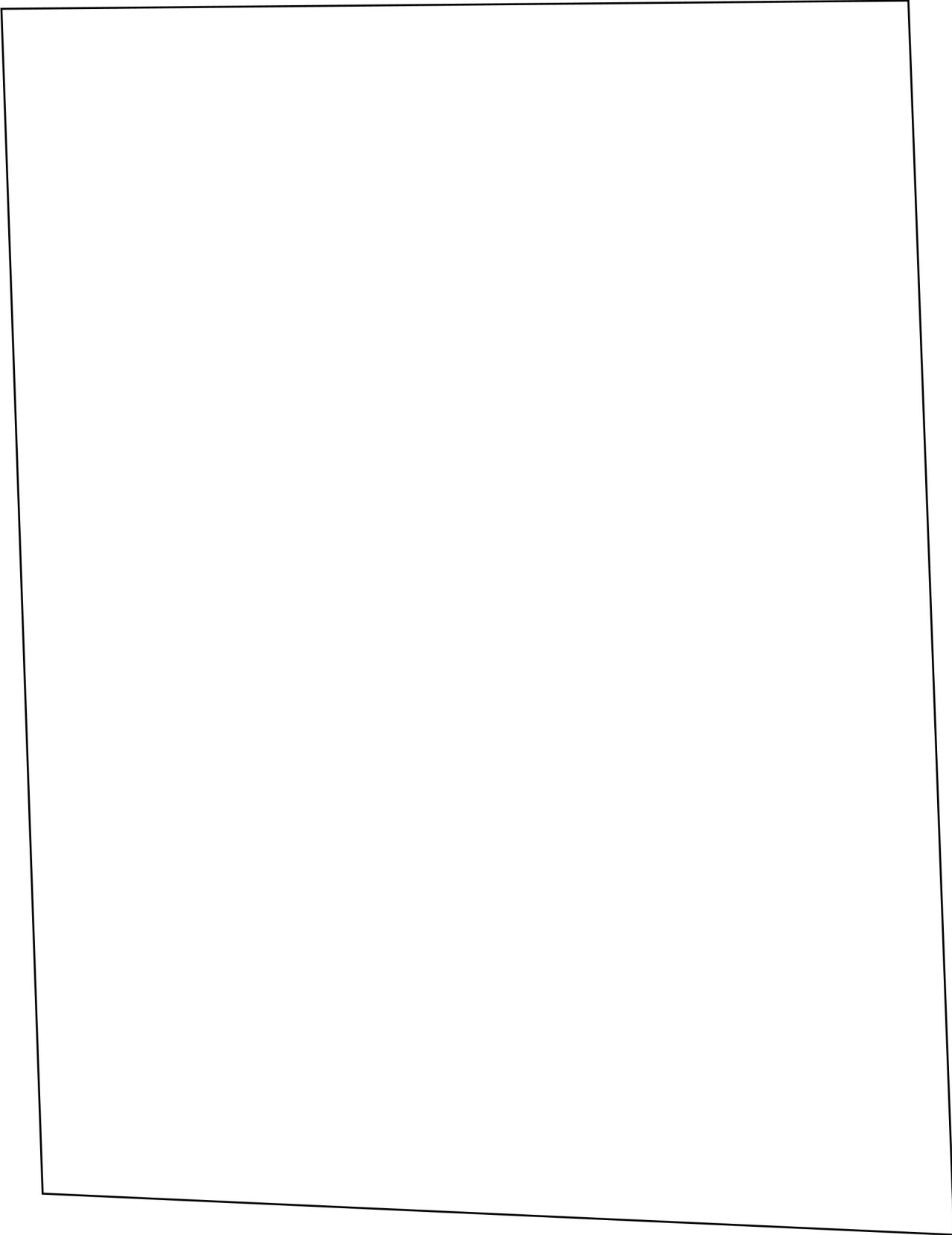
At 1:30 PM on January 3, 1992 three Chiefs, the Tribal clerk and several helpers met at the Tribal office to make entry and to inspect the property. Because of the changed locksets, forced entry was required. An officer from the New York State police was present to witness the proceedings. All Tribal records in the locked safes and fireproof vaults were not disturbed. But all financial records were removed and other records were tampered with and some are missing. At that time all remaining Tribal records were removed for safe storage and the office building was secured (boarded up) against further entry.

Later that afternoon, Chiefs Bernard Parker and James Logan met with FBI agents in the Buffalo district office to determine what actions could be taken.

LIST OF PERSONS OBSERVED AT THE OFFICE DURING THE NIGHT IT WAS  
BROKEN INTO: includes approximate ages and addresses.











U.S. Department of Justice

United States Attorney  
Western District of New York

United States Courthouse  
Buffalo, New York 14202

January 27, 1992

Chief Bernard Parker  
Chairman, Council of Chiefs  
Tonawanda Band of Senecas  
7027 Meadville Road  
Basom, New York 14013

Dear Chief Parker:

I am in receipt of your letter of January 17, 1992, requesting that our office investigate and prosecute persons responsible for breaking into the Tonawanda Seneca Nation Tribal Office on January 2, 1992. This matter is being examined by the Federal Bureau of Investigation and I have requested from them additional information prior to making a prosecutive decision.


I am concerned that in your letter you indicate that threats have been made to one of the chiefs. I am going to request the FBI to contact you to determine which chief received the threats and if this is continuing, to take steps to trace those calls and record them as evidence for a potential prosecution.

I am aware of your concerns for the safety of the residents on the Reservation and I encourage you to continue meeting with New York State Police to insure that there are not disturbances on the Reservation.

When I receive additional information from the Federal Bureau of Investigation, I will advise you of this office's decision as to proceeding against the individuals listed in the attachment to your letter.

Very truly yours,

DENNIS C. VACCO  
United States Attorney

BY:  KATHLEEN M. MEHLRETTER  
Assistant U. S. Attorney  
Chief, Criminal Division

KMM:ds



U.S. Department of Justice

Federal Bureau of Investigation



In Reply, Please Refer to  
File No.

1400 Federal Building  
111 West Huron Street  
Buffalo, New York 14202  
January 10, 1991

Tonawanda Band of Senecas  
Attention: Chairman Bernie Parker  
and the Council of Chiefs  
7027 Meadville Road  
Basom, New York 14013

RE: CRIME ON A GOVERNMENT  
RESERVATION

Dear Chief Parker:

As you know, the Buffalo Division of the Federal Bureau of Investigation has had extensive conversations with the Bureau of Indian Affairs, Washington, D.C. and the United States Attorney's Office, Buffalo, New York with regards to an incident which took place in the middle of December, 1991 involving the theft of certain financial records and letterhead from your Council of Chiefs' meeting house. The issue presented was whether or not the building that was broken into constitutes a "Federal Government Reservation" as defined under applicable federal statutes which would give the FBI investigative jurisdiction into this matter.

On 1/9/91, a conversation took place between Special Agent [redacted] of this office and Dean White of the Bureau of Indian Affairs, Syracuse, New York in which Mr. WHITE advised that the building was built with Federal grant money and that the title is in the name of the United States and not the Tonawanda Band of Senecas. For future reference, this would entitle Federal investigative jurisdiction in any crime which occurs in this building until such time as title is transferred to the Seneca Nation. Mr. White further advised that they are currently attempting to transfer title to the Seneca Nation though a definite time frame could not be given.



In addition, on January 9, 1992, Special Agent [redacted] spoke with Assistant United States Attorney Kathleen Mehlretter with regards to the break-in of this building. As a result of this and previous conversations with the United States Attorney's Office, Buffalo, New York, both the FBI and the USA's Office have concurred that since there are no aggravating or unusual circumstances involved in this relatively minor crime, no investigative resources will be spent on further investigation into this matter. The incident which took place at your reservation is further compounded by the internal problems you are currently facing on your reservation which appear to be a civil matter between you and the members of your Indian Nation. Furthermore, with regards to the actual loss of your financial records and letterhead, since the State Police already has investigative procedures in place to handle such crimes, the FBI would defer to their skill and expertise in handling this type of crime without the FBI's involvement.

It should be noted that if additional circumstances arise indicating a larger underlying problem of theft or destruction of Government property, you should immediately recontact the Buffalo Division of the FBI and present these aggravating circumstances. Of chief concern to the investigating Agent has been certain statements made by you that several of the members of the your nation have been arming themselves with semi-automatic and/or automatic rifles which is a clear violation of federal law and which the FBI has a major investigative interest in pursuing. If any additional information is developed along these lines or of any activity indicating militant activity by any group of individuals, you are asked to immediately contact this office at (716)856-7800.

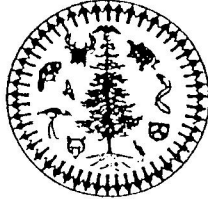
I am sorry that at this point we are not able to further investigate the initial complaint as presented to this Agency and now that investigative jurisdiction has been determined, any future complaints should be handled in a much more expeditious matter. Please feel free to contact me with any questions.

Sincerely, .

THOMAS J. COYLE  
Special Agent in Charge

By: *Arthur David Webster*  
ARTHUR DAVID WEBSTER  
Supervisory Special Agent





## HAUDENOSAUNEE

Tonawanda Band of Senecas

7027 MEADVILLE ROAD  
BASOM, NEW YORK 14013  
Phone (716)542-9942

March 26, 1992

Mr. Warren E. Buffett  
Chairman, The Buffalo News  
THE BUFFALO NEWS  
One News Plaza  
Buffalo, New York 14240

Greetings Mr. Buffett:

The Council of Chiefs of the Tonawanda Band of Seneca Nation wish to give you and your staff official notification of our long-standing policy that forbids members of the news media to enter the Tonawanda Reservation territory without the expressed consent of the full Council of Chiefs. Furthermore, we ask that you abide by this policy and not allow members of your staff to come onto the reservation without permission of the Council of Chiefs.

Our policy also stipulates that although one may receive permission to enter the reservation, each subsequent visit that person makes must be authorized by the Council of Chiefs. To emphasize the seriousness of this policy, we wish to point out that the New York State Police have cooperated in enforcing this policy.

Although Agnes Palazetti, one of your reporters, made one authorized visit to the Longhouse at the invitation of the Council of Chiefs, she has made several other visits that were never authorized by the Council. The articles written by her following these visits falsely report internal affairs of our Nation. Therefore, we will nothonor any of her requests to enter the Tonawanda Seneca Nation territory.

We would, however, consider requests from other staff members of the Buffalo News with the understanding that our policy forbids anyone to enter the Reservation territory without prior permission of the Council of Chiefs.

In closing, we include a copy of the February 3, 1992 letter from William Ott, Area Director, Bureau of Indian Affairs in Washington, D.C., affirming that the Council of Chiefs is the legitimate government of the Tonawanda Seneca Nation. Recent phone calls with Mr. Ott have confirmed that this letter recognizing our government still stands.

Sincerely,

*Chief Bernard Parker*  
Chief Bernard Parker

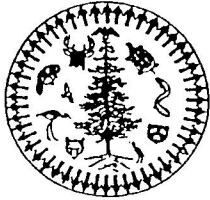
Council of Chiefs

cc: Stanford Lipsey, Publisher & President  
Murray B. Light, Editor and Senior Vice President  
Foster L. Spencer, Managing Editor  
Agnes Palazetti, Reporter

EQIA # 60048 (URTS 16457) DocId: 70106672 Page 24

NARA-18-1003-A-002436





**HAUDENOSAUNEE**

**Tonawanda Band of Senecas**

7027 MEADVILLE ROAD  
BASOM, NEW YORK 14013

March 26, 1992

State of New York  
Office of Indian Affairs  
Mr. Leigh Hunt, Director  
The State Capital  
Albany, New York, 12224

Greetings Mr. Hunt:

The Council of Chiefs, Tonawanda Band of Seneca Nation, is very concerned about recent activities involving the Office of Indian Relations (OIR) with regard to internal affairs at Tonawanda. Foremost is the OIR initiative to bring about a community meeting in our territory. The Haudenosaunee position regarding the relationship between our Nations and the OIR is unchanged since the Grand Council held at Onondaga in December 1991. That is, the traditional governments have not agreed to formally support or, in any manner establish a working relationship with, the OIR.

The Council of Chiefs has been informed that your office has made plans to conduct a community meeting at the Tonawanda Indian Community House (TICH) on or about April 7, 1992. Also involved with the planning for this meeting are other New York State agencies including the Departments of Health, Social Services and others. We feel that this action indicates a failure to acknowledge the decisions of the Grand Council, as well as undermining the integrity of the Council of Chiefs at Tonawanda. Additionally, we feel that your action to move forward with this meeting is clearly interference into the internal affairs at Tonawanda. Further, any interaction between the government of New York State and the government at Tonawanda is solely the role and responsibility of the Council of Chiefs and not the OIR.

The Council of Chiefs is currently taking appropriate steps to resolve the internal issues at Tonawanda. We are doing so in a manner consistent with the governmental structures and laws of the Haudenosaunee. Therefore, at this time we are requesting that the Office of Indian Relations withdraw plans to establish a meeting at Tonawanda and refrain from any future involvement with Tonawanda matters until such time as the Grand Council modifies its policy dealing with your office.

Sincerely,

*Chief Bernard Parker*  
Chief Bernard Parker, Chairman  
Council of Chiefs

cc; Governor Cuomo  
Saul Weprin, Assembly Speaker  
Ed Griffith, Assistant Speaker  
Ralph Marino, Senate  
Maurice Hinchey





**HAUDENOSAUNEE**

**Tonawanda Band of Senecas**

7027 MEADVILLE ROAD  
BASOM, NEW YORK 14013  
Phone (716)542-9942

March 27, 1992

Mary Jo Bane, Commissioner  
New York State Department of Social Services  
40 North Pearl Street  
Albany, New York 12243

Greetings Ms. Bane:

The Council of Chiefs, Tonawanda Band of Seneca Nation, offer our congratulations to you on your recent appointment as Commissioner of New York State Department of Social Services.

Although you may be quite new to all of the many functions with the department, we must bring a very serious matter to your immediate attention. And we further ask for your assistance in seeking a resolution for this matter that will be satisfactory to both the Department of Social Services and the Tonawanda Band of Seneca Nation.

During the last several months there has been a considerable amount of internal disturbances within the Tonawanda Seneca reservation territory. These have been caused by a faction that has made some very serious attempts to remove (overthrow) the traditional Council of Chiefs at Tonawanda. These activities have resulted in a banishment order (see attached letters) for five (5) persons from our Nation. However, these banished persons have refused to leave the territory.

The Council of Chiefs is actively pursuing many different avenues to resolve the internal issues. Included in these efforts are requests to the Federal government, as well as New York State, for assistance under the articles of the 1794 Treaty of Canandaigua. However the faction responsible for the major disturbances has continued to create incidents that are adversely affecting peaceful solutions for the issues.

Now we must bring several specific personnel matters to your attention. And these are matters that if left unresolved, could definitely disrupt the relationship between New York State and the Tonawanda Seneca Nation.



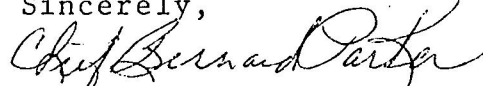
First are the matters that involve Ms. Diana Malkonian, Administrator, Bureau of Indian Affairs under the Local Liason Unit. Ms. Malkonian has recently made approvals for two of the banished persons, Stonehorse Goeman and John Redeye, to use the Tonawanda Indian Community Building (TICH) for a general community meeting early in April 1992. These persons are no longer considered as Tonawanda Seneca citizens and in fact, are no longer even Indian people (see letters). Therefore, they are no longer eligible for any service or benefits including the use of the Tonawanda Indian Community House for any purpose.

Ms. Malkonian has refused to recognize the banishment order and in fact proceeded on her own initiative to allow these persons the use of the Community Building in violation of the By-Laws of the Tonawanda Indian Reservation Community Association (TIRCA). Her actions to approve these meetings is clearly interference into the internal affairs of Tonawanda. It also represents a direct attempt to undermine the integrity of the Council of Chiefs as well as the Board of Director of the TICH.

Secondly, a Department of Social Services employee at the TICH, Ramona Charles, has continually used her position as building custodian to interfere into the internal governmental affairs at Tonawanda. While we fully agree that Ms. Charles may express personal views according to her own choices in any matters she may desire, we feel that her use of, or the abuse of, her position to politically influence members of this community cannot be condoned. These matters have previously been brought to the attention of Ms. Malkonian apparently without any effect.

In closing, we urge that you carefully study and consider all of the issues that we have placed before your office. Should you require additional information regarding any of the above, please call at any time. Thank you for your attention to these very important issues.

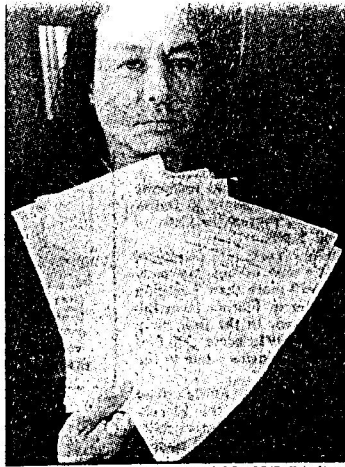
Sincerely,



Chief Bernard Parker, Chairman  
Council of Chiefs

cc: Brian Wing, Local Liason Unit  
Executive Department, DSS  
Gregory Kaladjian, Acting Comm., DSS





RICHARD W. ROELLER/Bufalo News

Stonehorse Lane holds the tribal minutes from a decade ago, when records were open.

## Financial dispute goes to root of Seneca tradition

By AGNES PALAZZETTI  
News Staff Reporter

A bitter power struggle now unfolding on the Tonawanda Indian Reservation involves tradition, politics, philosophy — and money.

These Senecas are a rich people. More than \$4.2 million remains in a trust fund for them, a tribe of 1,100.

But they also are a proud and poor people.

They refuse to touch that money, and they live in dilapidated houses without indoor plumbing, electricity or jobs.

Now, some on the reservation are declaring war on most of their chiefs. The chiefs, in turn, have retaliated and tried to ban the dissidents. State troopers have been called. And gunshots have been fired in anger.

"These are leaders who are trying to keep our people 200 years back," complains Stonehorse Lane. "They know our older people are afraid to say anything because they were brought up never to talk against their chiefs. So, it is up to us who are younger to speak out for them, to fight for them and for the entire tribe."

Affidavits asking that an interim leadership be appointed to replace the current Council of Chiefs until a new council can be assembled are being collected from tribal members both on and off the reservation, where about 500 to 600 of the 1,100 enrolled members live.

Chief Bernard Parker justifies his leadership as the unofficial head of the Council of Chiefs over the past 10 years.

"We are concerned about the safety and the well-being of our people," he says. "These people who are causing trouble want money or access to money. I think that is their motivation. We are trying to solve these problems with a peaceful process."

Tradition is deeply embedded among the people on the 7,549-acre reservation, near Akron, even among the younger people who are struggling to balance living in the 20th century with preserving a culture forged a millennium or more ago. The Tonawanda Senecas are a member of the Iroquois Confederacy, which upholds the authority of chiefs, whether they are right or wrong.

"The people didn't understand it wasn't the federal government causing the problems but these very same chiefs we are now fighting, who were hiring their relatives," Susan LaFromboise contends. "They are depriving our people of help that is out there, just waiting to be asked."

The multimillion-dollar nest egg belonging to the Tonawanda Senecas originated with \$900,000 they received in 1972 as their share of a settlement relating to land claims dating to the 1800s.

The Tonawanda Seneca chiefs refused to take the money, though, feeling that strings were attached. The federal government has kept the money in interest-bearing accounts that now total \$4.2 million.

What has prompted the immediate dispute, See Senecas Page B4



Bernard Parker

1992 APR 20 AM 11:16



# Senecas: Shots fired as woman is banished

Continued from Page B1

though, is the dissidents' discovery in early December of the tribe's involvement with a cellular telephone partnership.

The dissidents learned that the tribe was to receive more than \$680,000 from an investment with the partnership.

This was news to the residents of the reservation who did not know about this deal.

So the dissidents sought the help of an attorney to stop the check from being sent to Parker.

Parker said he made the investment 2½ years ago for the tribe with \$200,000 of borrowed money.

"It promised a quick return, and we needed money to do things for our people," he says.

But the insurgents accuse their leaders of refusing to share information about the tribe's financial resources as well as not giving the people a role in determining how the money is spent.

"We have asked for monthly statements like our chiefs gave us in the past," Lane explains, "but we are told it is none of our business. Others of us want to open businesses, and we are stonewalled by the chiefs."

They also are pressuring for the removal of Parker, named to the council about 10 years ago.

And there is anger that the only two smoke shops on the reservation belong to relatives of Parker's wife.

Ill health and advanced age of some of the chiefs have resulted in empty chairs at meetings of the Council of Chiefs, leading to insurgents' criticism that just a few chiefs are making decisions.

Parker and Darwin Hill, clerk of the tribe, insist that "six troublemakers" are the instigators of the unrest. Only when they have been put off the reservation can there be peaceful discussions with the people, the two leaders say.

They concede that there are economic problems on the reservation, but Parker adds: "We are the government, and it is our duty to make the decisions for our people."

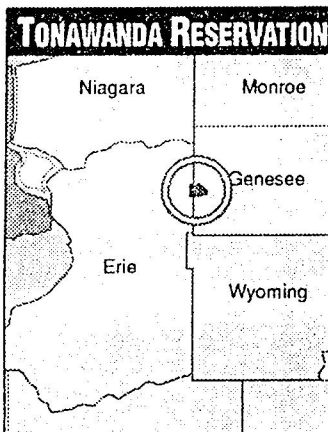
And Parker does have his supporters.

"If it were not for our chiefs,"



RICHARD W. ROELLER/Buttalo News

Sachem Chief Corbett Sundown, 84, listens to Marion Doctor, 79, who worries that some people on the reservation have been "getting more and more powerful."



JACK WEIBEL/Buttalo News Graphics

Darlene Jonathan says, "we could lose our reservation. They are the ones who go to Washington all of the time to make sure our treaties are upheld and they are the ones who take care of us."

"We must fight these people who are trying to overthrow our government."

One of the chiefs' first moves to quell the insurrection was to order banishment papers served on the "six troublemakers."

The move strips the offender of Indian citizenship and rights.

"You must leave immediately and we will walk with you to the outer borders of our territory," the centuries-old banishment notice ordered.

Yet there have been peacemak-

ing ventures.

A few weeks ago, Leon Shenandoah, the tadodaho (or president) of the Grand Council of the Iroquois Confederacy, came here along with chiefs of other members of the Confederacy to listen to the problems.

"We did not tell the chiefs what to do or not to do," Shenandoah said afterward. "Among the complaints, we heard that the people did not know about the tribe's money. I only said that, in my tribe, the Onondaga, we give our people this information. But it is up to the chiefs here to decide that."

Yet after giving that advice, Shenandoah states unequivocally: "We will recognize no other government for this tribe."

Indeed, removing Parker and the other chiefs from their leadership positions will be difficult.

Even if the dissidents gain the support of at least 51 percent of the enrolled adult tribal members through the affidavits, the Bureau of Indian Affairs has said it will continue to recognize the old leadership.

"If the BIA doesn't give us recognition," promises Ms. LaFromboise, one of the dissidents, "we will go to court."

The unrest is not always civil. State police have been called to the reservation on several occasions, and both factions, as well as state and federal officials, are concerned that the situation could deteriorate to violence.

"We try to remain neutral," said Capt. Robert Browning of Batavia's Troop A, "because this is an internal struggle between two Indian groups but it is a situation that could easily become very dangerous. And we have no choice but to respond if there is an alleged criminal act."

That happened on Jan. 25.

Ms. LaFromboise was one of those targeted to receive a banishment notice. When members of the tribe, including her son, approached her home that Saturday evening to serve the notice, she came out firing a gun into the air.

"I was only protecting my home and my children," she insisted. "There have been threats on my life and on my children. Yes, I am afraid of what they might do to us."

Troopers charged her with reckless endangerment. She has pleaded innocent in a Town of Newstead town court and plans to ask for a jury trial.

She also said that neither she or the other five on the banishment list will leave their homes on the reservation.

Parker is equally adamant.

"They can go ahead and put together whatever government they want," he said, "but within our system of government, there is no way that the chiefs now serving would not be chiefs. They serve for life unless removed by the clan mothers. They are the only ones who can do that."

## Tax: Ch needs C

Continued from Page

getting \$200,000 now very fortunate."

About the only proposal could succeed some similar acc were made for local in the Fort Erie are.

Sen. Dale M. Voll said that would dou Bridge Authority's million.

Still, Volker exp interest. "You can tain there will be that," he said.

Swist also expla Metropolitan Trans thorty controls vari City bridges and tur a similar arranger NFTA would ben New York.

But attorney L. C hams of Fort Erie, the bridge authori suggestions caused lems between the and Canada in the p

"The position I my government wo would do all I can t a unilateral change he said.

Williams also dis tempt to increase share of toll reven maintenance needs old bridge and \$ scheduled improven

SPEC  
OI  
20  
ALL FI  
MEN —  
order th  
want and  
So, whe  
narrow,  
order it  
and you

Ja  
3100 B



# Tonawanda Senecas remove clan chief assailed on finances

By AGNES PALAZZETTI  
News Staff Reporter

Bernard Parker of the Tonawanda Band of Senecas was stripped Tuesday of his title as chief of the Snipe Clan.

The clan mother, the only member of each of the tribe's eight clans entitled to choose or remove her clan's chief, allowed a reporter and photographer to observe the ceremony that dates back more than 1,000 years, making them among the few whites to witness it.

More than 50 members of the tribe gathered Tuesday on the dirt road in front of Parker's modest home on the Tonawanda Reservation, near Akron, for the ceremony.

Parker, who has been under fire for his handling of the tribe's finances — including an untouched \$4.2 million escrow account — and for refusing to share internal tribal information with the people, refused to bow to the decree of Snipe Clan Mother Shirley Snyder.

He insisted that he remains chief.

He also refused to leave his home and join Mrs. Snyder and other members of the Snipe Clan, whom he represents on the Chiefs Council, on the walk to the longhouse. That is the center for traditional religious ceremonies and the only site an official "dehorning" of a chief may take place.

Traditionally, one of the headpieces worn by chiefs is made from a buffalo head, complete with horns. When a chief is ordered "taken down" (removed) by the clan mother, the horns are cut off by the tribe's warriors. The act symbolically cuts off his power and his ability to speak on tribal affairs.

Leon Shenandoah — an Onondaga chief and the tadodaho (or president) of the Grand Council of the Iroquois Confederacy to which the Tonawanda Seneca Band belongs — said Mrs. Snyder could choose another chief.

See Chief Page A5



ROBERT KIRKHAM/Buffalo News

Clan Mother Shirley Snyder, left, waits patiently outside Bernard Parker's door Tuesday with several supporters.



# Chief: State police watch event

Continued from Page 1

"But who will be chief will not be decided until the day before the Condolence Ceremony (raising up of a chief), when all of the chiefs of the Confederacy will gather in the Tonawanda Seneca longhouse ... to decide who is worthy to be chief of the clan," Shenandoah explained from his Syracuse home.

Mrs. Snyder said she would begin talks with her clan women "soon" but did not know when a new chief would be chosen.

Tuesday, she carried the traditional clan mother wampum and was accompanied by other women of her clan as she stood on Parker's back porch calling out to him by his Indian name.

She said that at one point, "(Parker) came to the door, and I told him that he was removed from his position as our chief and asked him to surrender his wampum to us. He refused and closed the door on us."

Mrs. Snyder also addressed the controversy of who holds title to clan mother of the Snipe Clan — a role assumed by Parker's wife, Maxine.

She told Mrs. Parker she could not be clan mother because "the Great Law forbids a wife from being clan mother to her chief husband."

She also figuratively "put a block" in the mouths of Mrs. Parker's sisters "because they had acted against the best interests of the clan."

John W. Anna stood in the background, quietly watching. The veteran senior investigator



ROBERT KIRKHAM/Buffalo News

Esther Sundown expresses her delight Tuesday after learning that Bernard Parker was ousted as chief.

with the State Police Bureau of Criminal Investigation had made it clear to the Senecas that "our laws don't play the game here, but I am trusting you to keep things peaceful."

Throughout the controversy that has been simmering on this impoverished reservation for the past several months, Parker has maintained a paternalistic attitude toward the approximately 600 residents. Another 500 Tonawanda Senecas live off the reservation.

Repeated attempts to reach him by telephone after the "dehorning" ceremony were unsuccessful. But he previously has maintained that the Chiefs Council has the final say on all tribal affairs, that the internal conflict now ripping through the reservation is the "doing of a handful of people who want money or access to money" and that his people are content to live without running water, indoor plumbing and, in some cases, without electricity in their homes.

Parker and some of the other chiefs have banished five of the insurgents from the reservation.

All vow never to leave.

To reinforce the banishment order, the chiefs have notified an Indian medical clinic and a nearby Akron drugstore that the five and their families are to receive no medical attention or prescription drugs.

In keeping with treaties, the federal government provides Indians with medical services and medicine.

Peter Poodry, a diabetic and one of those banished, learned Sunday that he would have to pay for insulin. John Redeye, another of those banished, got the same news from the pharmacist. Medication for his chronic asthma can run as high as "\$200 a month," he said.

When Poodry's wife attempted to have their children treated at the Tonawanda Indian Reservation Medical Clinic, they were turned away.

The insurgents will be meet in Syracuse today with Leigh Hunt, state Indian commissioner.



Factual Errors and Inaccuracies  
of Enclosed Buffalo News Articles  
By Agnes Palezetti

1. **"These Senecas are rich people. More than \$4.2 million remains in a trust fund for them, a tribe of 1,100."**

The Tonawanda Band of Seneca are not rich people. The \$4.2 million that the federal government is supposedly holding for them has not been accepted by them. The Senecas have never recognized the validity of this "compensation" for the "land sale" forced on them by the US federal government. In addition, simple mathematics indicates that \$4.2 million per 1,100 people equals \$3,818.18, a figure well below any poverty line.

2. **"... live in dilapidated houses without indoor plumbing, electricity or jobs."**

There are only five homes at Tonawanda without electricity. Three years ago all families were given the option of electricity through a subsidized winterization program. Those five families chose not to have electricity installed.

3. **"The chiefs, in turn, have retaliated and tried to ban the dissidents."**

According to the Great Law of Peace which determines Seneca and Iroquois law and custom, banishment comes from the people. They tell the chiefs what to do. Banishment is not a unilateral matter decided only by the chiefs. That law and custom was adhered to in this matter; the People of the Tonawanda Band of Seneca initiated the banishment, not the Chiefs.

5. **"They know our older people are afraid to say anything because they were brought up to never talk against their chiefs."**

The Council of Chiefs, and each individual chief, is the voice of the people in a very literal sense. They do not serve as representatives in the same sense as US elected officials, they do not have that degree of freedom and latitude. The Chiefs take this responsibility very seriously, are selected by the clans through their Clan Mothers, and serve without any form of monetary compensation for life..

6. **"... an interim leadership be appointed to replace the current Council of Chiefs until a new council can be assembled... ."**

The Clan Mothers choose each chief in strict accordance with the Great Law of Peace. The removal of a chief is a serious issue for each clan. The Great Law of Peace stipulates that once a chief is removed no other person can take his place until he dies. Palezetti's statement implies that the purpose of the small insurgent group is to seize power fraudulently and control the political and economic decision making process at Tonawanda; to replace a democratic political structure with an autocracy.



7. **"The Tonawanda Senecas are a member of the Iroquois Confederacy, which upholds the authority of chiefs, whether they are right or wrong."**

The Council of Chiefs is the voice of the Tonawanda Band of Seneca within the Grand Council of Chiefs of the Iroquois Confederacy. The authority for the Council of Chiefs comes from the Seneca people through the clan structure. The Grand Council may act in an advisory capacity to each nation's Council of Chiefs.

9. **"This was news to the residents of the reservation who did not know about this deal."**

The Tonawanda Band of Seneca have never been kept in the dark about financial matters. The Council of Chiefs do not operate as an autocracy independent of input from the people.

10. **"Parker said he made the investment 2 1/2 years ago for the tribe with \$200,000 of borrowed money."**

Throughout the entire time of the Tonawanda Seneca involvement in the TELECOM business process, there has been no money invested or borrowed by the Council of Chiefs. All funds invested into the franchise award period and the construction permit process has been borrowed by the firm EAGLE TELECOM, INC..

11. **"Others of us want to open businesses, and we are stonewalled by the chiefs."**

The Council of Chiefs developed a set of rules and guidelines in order to regulate businesses on Tonawanda land in 1984. Any individual wishing to open a business must apply through the Council of Chiefs, and each applicant is judged strictly on the merits of the proposal submitted.

12. **"One of the chiefs' first moves to quell the insurrection was to order banishment papers served on the 'six troublemakers.'"**

Only five former members of the Tonawanda Band of Seneca have been banished.

13. **"Even if dissidents gain the support of at least 51 percent of the enrolled adult tribal members through the affidavits, the Bureau of Indian Affairs has said it will continue to recognize the old leadership."**

This is a meaningless statement. The democratic structure set up under the Great Law of Peace does not follow the electoral model of US democracy. The Tonawanda Band of Seneca operate under a system of government run by consensus. Much responsibility is given to the clan mothers. Simply focusing on the Council of Chiefs misses the subtlety of this political process. Finally, because of consensus decision making, citing any percentage is irrelevant; a decision is binding only when ALL people have agreed to it.



14. **". . . the situation could deteriorate into violence."**

The situation has already resulted in violence. There has been a break-in at the tribal office, shots have been fired at houses at Tonawanda and, more importantly, at individuals who were carrying out the will of the Tonawanda Band of Seneca.

15. **". . . she came out firing a gun into the air"**

This was not the case. Susan Laframboise (one of the banished) fired shots at chest level between two groups of Tonawanda Seneca (including her own son) as they approached her home with the banishment order.



# DOJ EXECUTIVE SECRETARIAT CROSS-REFERENCE RECORD



**CONTROL NUMBER:** 92041706005

GREEN, JESS

Shawnee Tribe of Oklahoma

---

THE ENTIRE DOCUMENT PACKET FOR THE CONTROLLED  
CORRESPONDENCE INDICATED BY THE ABOVE EX.SEC.  
CONTROL NUMBER HAS BEEN FILED IN THE FOLLOWING  
PRIMARY FILE LOCATION WITHIN THE SUBJECT FILES  
OF THE ATTORNEY GENERAL.

**PRIMARY FILE:** INVITATIONS DOJ *NATIVE AMERICAN BAR*  
*Attorney Recruitment*  
*Meetings PROSECUTORS*  
31 March 1992

---



# DOJ EXECUTIVE SECRETARIAT CROSS-REFERENCE RECORD



**CONTROL NUMBER:** 92040205299

BRYAN, RICHARD H, SENATOR

---

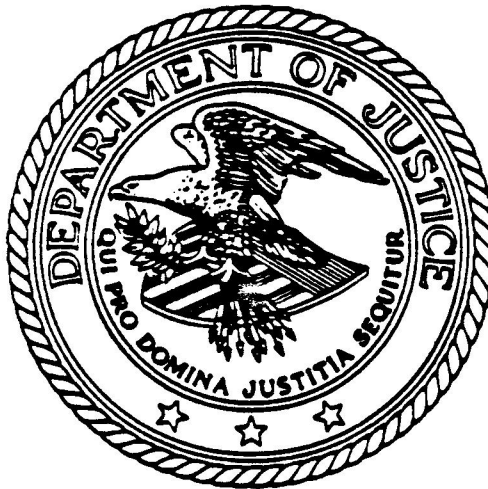
THE ENTIRE DOCUMENT PACKET FOR THE CONTROLLED  
CORRESPONDENCE INDICATED BY THE ABOVE EX.SEC.  
CONTROL NUMBER HAS BEEN FILED IN THE FOLLOWING  
PRIMARY FILE LOCATION WITHIN THE SUBJECT FILES  
OF THE ATTORNEY GENERAL.

**PRIMARY FILE:** ACTS/Indian Gaming Regulatory Act  
31 Mar 92

---



# DOJ EXECUTIVE SECRETARIAT CROSS-REFERENCE RECORD



**CONTROL NUMBER:** 92040205262

KYL, JON, CONGRESSMAN

---

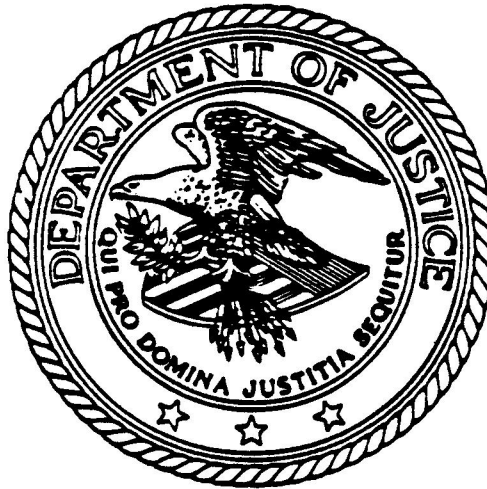
THE ENTIRE DOCUMENT PACKET FOR THE CONTROLLED  
CORRESPONDENCE INDICATED BY THE ABOVE EX.SEC.  
CONTROL NUMBER HAS BEEN FILED IN THE FOLLOWING  
PRIMARY FILE LOCATION WITHIN THE SUBJECT FILES  
OF THE ATTORNEY GENERAL.

**PRIMARY FILE:** LEGISLATION/HR. 349

27 MAR 92



# DOJ EXECUTIVE SECRETARIAT CROSS-REFERENCE RECORD



**CONTROL NUMBER:** 92040105185

BROOKS, JACK, CONGRESSMAN

---

THE ENTIRE DOCUMENT PACKET FOR THE CONTROLLED  
CORRESPONDENCE INDICATED BY THE ABOVE EX.SEC.  
CONTROL NUMBER HAS BEEN FILED IN THE FOLLOWING  
PRIMARY FILE LOCATION WITHIN THE SUBJECT FILES  
OF THE ATTORNEY GENERAL.

**PRIMARY FILE:** CONGRESSIONAL/HEARINGS

25 MAR 92



# DOJ EXECUTIVE SECRETARIAT CROSS-REFERENCE RECORD



**CONTROL NUMBER:** 92032404676

BROOKS, JACK CONGRESSMAN

---

THE ENTIRE DOCUMENT PACKET FOR THE CONTROLLED  
CORRESPONDENCE INDICATED BY THE ABOVE EX.SEC.  
CONTROL NUMBER HAS BEEN FILED IN THE FOLLOWING  
PRIMARY FILE LOCATION WITHIN THE SUBJECT FILES  
OF THE ATTORNEY GENERAL.

**PRIMARY FILE:** CONGRESSIONAL/HEARINGS

20 MAR 92



DEPARTMENT OF JUSTICE  
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: SESSIONS, WILLIAM S., DIRECTOR, FBI  
To: AG.

Date Received: 03-19-92 Date Due: NONE  
Subject & Date

ODD: NONE  
Control #: X92031904444

03-17-92 LETTER (REC'D FROM OAG) REGARDING A RECENT ARTICLE ABOUT THE DEPARTMENT OF INTERIOR ESTABLISHING A NEW OFFICE TO POLICE THE BURGEONING INDIAN GAMING INDUSTRY. ADVISES THAT THE FBI IS ALSO VERY COGNIZANT OF THE RAPIDLY EXPANDING INDIAN GAMING INDUSTRY, AND THE POTENTIAL FOR CRIMINAL ELEMENTS, ESPECIALLY ORGANIZED CRIME, TO INFILTRATE AND EXPLOIT THIS INDUSTRY. THE FBI WILL CONDUCT APPROPRIATE INVESTIGATION WHEN EVIDENCE OF ORGANIZED CRIME OR OTHER \*\*

	Referred To:	Date:	Referred To:	Date:
(1)	OAG;	03-19-92	(5)	
(2)			(6)	
(3)			(7)	
(4)			(8)	

W/IN:

PRTY:

1

OPR:

EHZ

INTERIM BY:

Sig. For: NONE

DATE:

Date Released:

Remarks

\*\* SERIOUS CRIMINAL ACTIVITY ON INDIAN RESERVATIONS EXISTS.

INFO CC: DAG, CRM.

(1) FOR INFORMATION.

04-23-92: COPY PROVIDED TO OLS PER REQUEST. (CYN)

04-30-92: COPY PROVIDED TO OLC (DAVIS) PER REQUEST. (EHZ)

Other Remarks:

OLA CONTACT:

MWC 03-19-92

FILE: INDIAN AFFAIRS

CROSS REFERENCES:

1. FEDERAL BUREAU OF INVESTIGATION
2. GAMBLING

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY  
\*\*\*\*\*

17 MARCH 92



OFFICE OF THE DIRECTOR  
FEDERAL BUREAU OF INVESTIGATION  
UNITED STATES DEPARTMENT OF JUSTICE  
WASHINGTON, D. C. 20535

Honorable William P. Barr  
The Attorney General  
Washington, D.C.







U.S. Department of Justice

Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535

March 17, 1992

RECEIVED  
DEPARTMENT OF JUSTICE  
92 MAR 19 A9:23  
EXECUTIVE SECRETARIAT

Honorable William P. Barr  
The Attorney General  
Washington, D.C.

Dear Mr. Attorney General:

I read in the March 6, 1992 USA Today newspaper, that Secretary Manuel Lujan, Jr., Department of the Interior (DOI), announced a crackdown on tribal gaming operations to protect the public and tribes from "undesirable elements." The article also advised that Lujan established a new office within the Bureau of Indian Affairs (BIA) to police the burgeoning Indian gaming industry. This prompted me to advise you that the FBI is also very cognizant of the rapidly expanding Indian gaming industry, and the potential for criminal elements, especially organized crime, to infiltrate and exploit this industry.

You should know that the FBI, through the Organized Crime Section (OCS) and the Fugitive/Government Reservation Crimes Unit (F/GRCU), will conduct appropriate investigation when evidence of organized crime or other serious criminal activity on Indian reservations exists. Thus far, the FBI has uncovered only isolated incidences of organized crime infiltration, characterized by either direct involvement through hidden ownership or management, or indirect involvement through penetration of service industries. One such example involved La Cosa Nostra members from Chicago who attempted to infiltrate gambling operations on the Rincon Indian Reservation near San Diego. As a result of this investigation, a Federal grand jury returned a 15-count indictment charging ten subjects with Racketeering, Extortion, Mail Fraud, and Wire Fraud.



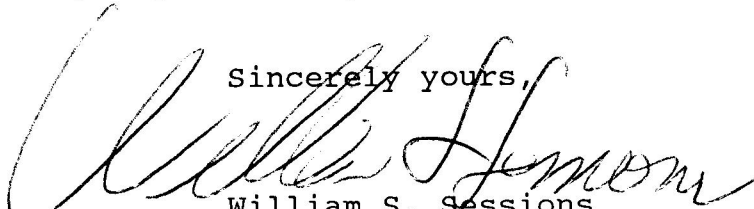


Honorable William P. Barr

Representatives from the OCS and the F/GRCU have been in frequent contact with representatives from your department, particularly Deputy Assistant Attorney General, Paul L. Maloney, as they assist Mr. Maloney in the preparation of his testimony before the Senate Select Committee on Indian Affairs, scheduled for March 18, 1992. The FBI is also maintaining close liaison with the DOI, and the BIA, Department of Law Enforcement Services in regard to FBI assistance in their conducting background investigations on individuals who make application to operate or manage Indian gaming establishments.

You will be kept advised of the FBI's involvement in investigations related to organized crime infiltration of the Indian gaming industry, and other pertinent developments that may arise as a result of the rapid growth of gambling establishments in Indian country.

Sincerely yours,



William S. Sessions  
Director



# DOJ EXECUTIVE SECRETARIAT CROSS-REFERENCE RECORD



**CONTROL NUMBER:** 92031304165

INOUE, DANIEL K, SENATOR

---

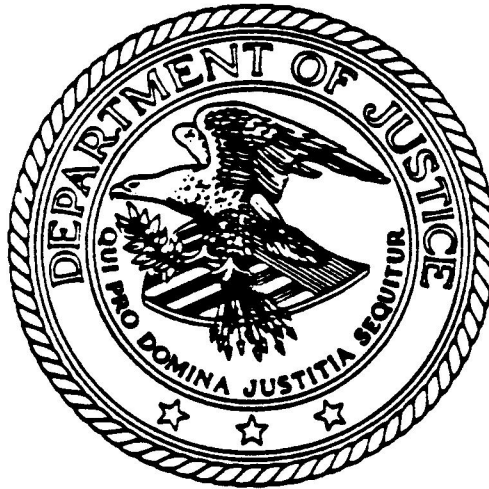
THE ENTIRE DOCUMENT PACKET FOR THE CONTROLLED  
CORRESPONDENCE INDICATED BY THE ABOVE EX.SEC.  
CONTROL NUMBER HAS BEEN FILED IN THE FOLLOWING  
PRIMARY FILE LOCATION WITHIN THE SUBJECT FILES  
OF THE ATTORNEY GENERAL.

**PRIMARY FILE:** CONGRESSIONAL/HEARINGS

12 MAR 92



# DOJ EXECUTIVE SECRETARIAT CROSS-REFERENCE RECORD



**CONTROL NUMBER:** 92022803353

MILLER, GEORGE, CONGRESSMAN

---

THE ENTIRE DOCUMENT PACKET FOR THE CONTROLLED  
CORRESPONDENCE INDICATED BY THE ABOVE EX.SEC.  
CONTROL NUMBER HAS BEEN FILED IN THE FOLLOWING  
PRIMARY FILE LOCATION WITHIN THE SUBJECT FILES  
OF THE ATTORNEY GENERAL.

**PRIMARY FILE:** LEGISLATION/HR. 4209

25 FEB 92



# DOJ EXECUTIVE SECRETARIAT CROSS-REFERENCE RECORD



**CONTROL NUMBER:** 92022102951

MILLER, GEORGE, CONGRESSMAN

---

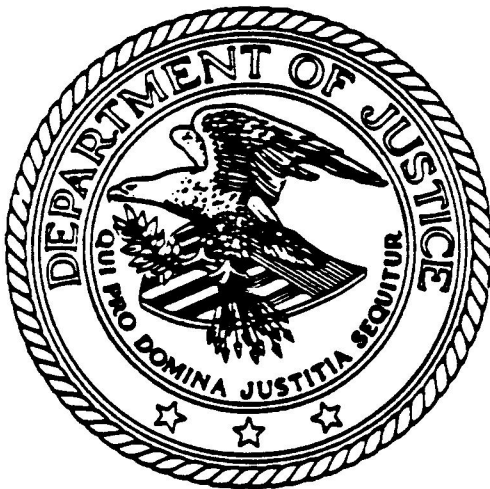
THE ENTIRE DOCUMENT PACKET FOR THE CONTROLLED  
CORRESPONDENCE INDICATED BY THE ABOVE EX.SEC.  
CONTROL NUMBER HAS BEEN FILED IN THE FOLLOWING  
PRIMARY FILE LOCATION WITHIN THE SUBJECT FILES  
OF THE ATTORNEY GENERAL.

**PRIMARY FILE:** CONGRESSIONAL/HEARINGS

18 FEB 92



# DOJ EXECUTIVE SECRETARIAT CROSS-REFERENCE RECORD



**CONTROL NUMBER:** 92022102936

INOUE, DANIEL K, SENATOR

---

THE ENTIRE DOCUMENT PACKET FOR THE CONTROLLED  
CORRESPONDENCE INDICATED BY THE ABOVE EX.SEC.  
CONTROL NUMBER HAS BEEN FILED IN THE FOLLOWING  
PRIMARY FILE LOCATION WITHIN THE SUBJECT FILES  
OF THE ATTORNEY GENERAL.

**PRIMARY FILE:** CONGRESSIONAL/HEARINGS

14 FEB 92



DEPARTMENT OF JUSTICE  
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: MOYNIHAN, SENATOR DANIEL PATRICK

To: AG.

ODD: 03-12-92

Date Received: 02-10-92 Date Due: 03-31-92 Control #: X92021202401

Subject & Date

02-07-92 LETTER ON BEHALF OF BARNARD PARKER, CHAIRMAN,  
COUNCIL OF CHIEFS, TONAWANDA BAND OF SENECA, BASOM, NY,  
REGARDING THE THEFT OF TRIBAL RECORDS AND FINANCIAL  
INFORMATION THAT WAS TAKEN DURING AN UNLAWFUL ENTRY BY  
UNAUTHORIZED PERSONS OF THE TRIBAL OFFICE. REQUESTS AN  
INVESTIGATION INTO THIS MATTER.

	Referred To:	Date:		Referred To:	Date:	
(1)	FBI;SESSIONS	02-12-92	(5)			W/IN:
(2)	EOA;MCWHORTER	03-10-92	(6)			
(3)			(7)			PRTY:
(4)			(8)			2
	INTERIM BY:			DATE:		OPR:
	Sig. For:	EOA		Date Released:	03-31-92	MLH

Remarks

CC: EOA. ORIGINAL TO AG FILES.

(1) RETURN CONTROL SHEET WITH A COPY OF THE RESPONSE TO  
EXEC SEC, ROOM 4400-AA.

02-24-92: FBI INTERIM RESPONSE DATED 02-19-92. COPY TO  
LEGIS. FILES. (MLH)

(2) FBI REFERS TO EOA FOR RESPONSE. (MLN)  
03-31-92. EOA RESPONDED ON 03-30-92. COPY TO AG FILES.MLN

Other Remarks:

✓ FILE: INDIAN AFFAIRS

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY  
\*\*\*\*\*



The Honorable Daniel P. Moynihan  
United States Senator  
Buffalo, New York 14202

Attention: Rosemary Trimboli

Dear Senator Moynihan:

Your recent letter to Attorney General William P. Barr has been forwarded to this office for response. The Tonawanda Band of Senecas, through their Council of Chiefs, sent the United States Attorney's office for the Western District of New York a letter requesting prosecution for the alleged break-in and theft of documents from the Tonawanda Seneca Nation office. Your office also received a copy of this letter and you request our consideration of the matter.

On February 18, 1992, the United States Attorney's office met with members of the Council of Chiefs to discuss the matter. The Council was told that the only possible federal prosecution involved the theft of tribal documents under 18 U.S.C. § 1163, "Embezzlement and Theft from Indian Tribal Organizations." The alleged break-in is being investigated by the Genessee County District Attorneys' office because the offense is subject to state jurisdiction. The United States Attorney's office is awaiting receipt of a list of items allegedly stolen before it is able to determine the appropriate action. In addition, the office is working in conjunction with the District Attorney's office to ensure the most effective response.

If you have questions regarding this or any other matter, please do not hesitate to contact this office.

Sincerely,



Laurence S. McWhorter  
Director

bcc: Honorable Dennis C. Vacco  
United States Attorney  
Western District of New York  
Buffalo, New York 14202

Attention: Kathleen Mehltritt  
Criminal Chief

FO-92-0325  
LSM:DCW:RMX:sj;3/19/92:3/26/92  
Stephanie/Parker.ltr



# United States Senate

28 CHURCH STREET  
GUARANTY BUILDING  
BUFFALO, NEW YORK 14202

February 7, 1992

Mr. William Barr  
Attorney General  
Justice Department  
Main Justice Building  
10th Street and Constitution Avenue N.W.  
Washington, D.C. 20530

Dear Mr. Barr:

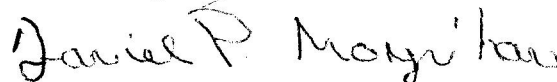
The enclosed inquiry is from a constituent of mine,  
Mr. Bernard Parker.

I would appreciate your careful consideration of these  
remarks, and your thoughts on what remedies there may be  
for this situation.

Please send me your written response in duplicate  
along with the letter from my constituent to:

Senator Daniel P. Moynihan  
Guaranty Building  
28 Church Street, Suite 203  
Buffalo, New York 14202  
ATTN: Rosemary Trimboli

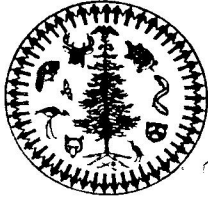
Sincerely,



Daniel Patrick Moynihan

RECEIVED  
DEPARTMENT OF JUSTICE  
92 FEB 10 P 4:49  
EXECUTIVE SECRETARIAT





**HAUDENOSAUNEE**

**Tonawanda Band of Senecas**

7027 MEADVILLE ROAD  
BASOM, NEW YORK 14013

January 17, 1992

Kathleen M. Mehltrittter  
Criminal Division Chief  
U.S. Attorney Office  
502 U.S. Courthouse  
Buffalo, New York 14202

Dear Ms Mehltrittter:

The Tonawanda Band of Senecas, Council of Chiefs, is contacting your office to make you aware of recent unlawful activities on the Tonawanda Seneca Nation territory. These events are causing concern for peace within our community and require immediate attention. We are specifically requesting assistance from your office because we believe that your direct involvement with this matter would be consistent with Federal Indian policy to both support and strengthen Tribal governments and to help maintain law and order on Indian reservations.

The Council of Chiefs hereby requests that the U.S. Attorney begin procedures to investigate and prosecute persons responsible for breaking into the Tonawanda Seneca Nation Tribal office on Thursday, January 2, 1992. During that illegal entry Tribal records and financial information was removed from the building and other important records were tampered with. According to advise from our Tribal attorneys, these acts are violations of Federal statutes 18 USC 1153 and 18 USC 1163. These statutes define both burglary on Indian reservations and theft of property from Tribal governments as Federal offenses. (Note: A full description of this event is attached)

In light of the recent disturbances on other Indian reservations in New York State, we are extremely concerned that failure to take appropriate actions will invite bolder activities by the persons involved and could result in further community disturbances and even violence. During recent discussions with agents from the local FBI office and the New York State police, we indicated that the group of persons involved with these activities poses a definite threat to overthrow the legal Tribal government at the Tonawanda Seneca Nation territory and must be dealt with immediately and decisively.

1992 JAN 31 PM 12:06




You should be aware that this situation did not develop overnight and that the Council of Chiefs has made serious efforts to meet with peoples to discuss issues of concern and to resolve any differences. However instead of waiting for further meetings and discussions, this group appeared as a force on December 27, 1991 and announced to one Chief at the Tribal office that they were taking over the building. Order was restored later that evening and nearly everyone seemed confident that a process was being developed that could begin to outline concerns and some possible solutions. But instead of waiting for the process to start, the group made the unlawful (forced) entry into the Tribal Headquarters as outlined in paragraph 2 of this letter. Additional activities, including telephone threats to one of the Chiefs and interference with routine Tribal business, have convinced the Council of Chiefs that it is absolutely essential to pursue legal actions to curtail this groups threats in our community.

Should you require additional information please contact the Council of Chiefs at the above address or any of the following by telephone:

Chief Bernard Parker	(716) 542-9942
Chief Emerson Webster	(716) 542-2816
Darwin Hill - Clerk	(716) 542-4600
Curtis Berkey, Esq	Indian Law Resource Center
	Washington, DC
	(202) 547-2800

Thank you for your attention on this matter and we look forward to your prompt response.

Sincerely,



Chief Bernard Parker  
Chairman, Council of Chiefs

cc: Senator Alfonse D'Amato  
 Senator Daniel Patrick Moynahan  
 Congresswoman Louise M. Slaughter  
 Assistant Secretary Indian Affairs, Eddie Brown  
 New York Field Office (BIA), Dean White  
 Governor Mario M. Cuomo



ATTACHMENT page 2.





ATTACHMENT

RE: Unlawful entry at Tribal office

DATE: January 2, 1992

LOCATION: Tonawanda Seneca Nation Office  
7027 Meadville Road  
Tonawanda Seneca Nation Territory  
via: Basom, NY 14013

At approximately 7:30 PM several persons drove past the Tribal office building and noted that the inside lights were all on. They called several Chiefs and the Tribal clerk and asked if a meeting was taking place. After being told that no meeting was scheduled for that night, the witnesses drove by the offices several times to determine the persons present. (list below)

The New York State police was called and responded with two officers including an investigator. By the time of their arrival about 9:30 PM, everyone had vacated the office and the door locksets had been removed and deadbolts installed. Because of the late hour it was decided that entry would not be made then to determine if Tribal records or property were removed or destroyed.

At 1:30 PM on January 3, 1992 three Chiefs, the Tribal clerk and several helpers met at the Tribal office to make entry and to inspect the property. Because of the changed locksets, forced entry was required. An officer from the New York State police was present to witness the proceedings. All Tribal records in the locked safes and fireproof vaults were not disturbed. But all financial records were removed and other records were tampered with and some are missing. At that time all remaining Tribal records were removed for safe storage and the office building was secured (boarded up) against further entry.

Later that afternoon, Chiefs Bernard Parker and James Logan met with FBI agents in the Buffalo district office to determine what actions could be taken.

LIST OF PERSONS OBSERVED AT THE OFFICE DURING THE NIGHT IT WAS  
BROKEN INTO: includes approximate ages and addresses.

FOIA(b)(6)



# DOJ EXECUTIVE SECRETARIAT CROSS-REFERENCE RECORD



**CONTROL NUMBER:** 92012801314

MILLER, GEORGE                      CONG.

---

THE ENTIRE DOCUMENT PACKET FOR THE CONTROLLED  
CORRESPONDENCE INDICATED BY THE ABOVE EX.SEC.  
CONTROL NUMBER HAS BEEN FILED IN THE FOLLOWING  
PRIMARY FILE LOCATION WITHIN THE SUBJECT FILES  
OF THE ATTORNEY GENERAL.

**PRIMARY FILE:** CONGRESSIONAL/HEARINGS

27 JAN 92

---



DEPARTMENT OF JUSTICE  
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: BINGAMAN, SENATOR JEFF

To: CIV

ODD: 02-19-92

Date Received: 02-03-92 Date Due: 02-19-92 Control #: X920204017719

Subject & Date

01-24-92 LETTER (COPY TO THE AG) WRITING FURTHER ON BEHALF  
OF TRIBAL OFFICIALS OF JEMEZ PUEBLO, NEW MEXICO, WHO  
REQUESTED THAT THE FEDERAL GOVERNMENT WAIVE THEIR  
ADMINISTRATIVE ERROR DEBT. THE SENATOR UNDERSTANDS THAT THE  
INTERIOR DEPT. HAS COMPLETED ITS REVIEW OF THE PUEBLO'S  
APPLICATION AND HAS RECOMMENDED THAT THE JUSTICE DEPT.  
TERMINATE ALL COLLECTION ACTIVITY AND GRANT THE REQUESTED  
DEBT WAIVER. THE SENATOR REQUESTS THAT THE DEPARTMENT \*\*

	Referred To:	Date:	Referred To:	Date:	
(1)	LEG;FILES	02-26-92	(5)		W/IN:
(2)			(6)		
(3)			(7)		PRTY:
(4)			(8)		1
	INTERIM BY:		DATE:		OPR:
	Sig. For: OLA		Date Released: 02-26-92		MLH

Remarks

02-26-92. AAG RAWLS SIGNED LETTER WHICH WAS DATED 02-26-92  
IN EXEC SEC AND MAILED FROM EXEC SEC. COPIES TO CIV AND  
LEGISLATIVE AND AG FILES.MLN

Other Remarks:

OLA CONTACT:

✓ FILE: INDIAN AFFAIRS

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY  
\*\*\*\*\*

C/O  
24 JAN 92



DEPARTMENT OF JUSTICE  
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: BINGAMAN, SENATOR JEFF

To: CIV

ODD: 02-19-92

Date Received: 02-03-92 Date Due: 02-19-92 Control #: X92020401771

Subject & Date

01-24-92 LETTER (COPY TO THE AG) WRITING FURTHER ON BEHALF  
OF TRIBAL OFFICIALS OF JEMEZ PUEBLO, NEW MEXICO, WHO  
REQUESTED THAT THE FEDERAL GOVERNMENT WAIVE THEIR  
ADMINISTRATIVE ERROR DEBT. THE SENATOR UNDERSTANDS THAT THE  
INTERIOR DEPT. HAS COMPLETED ITS REVIEW OF THE PUEBLO'S  
APPLICATION AND HAS RECOMMENDED THAT THE JUSTICE DEPT.  
TERMINATE ALL COLLECTION ACTIVITY AND GRANT THE REQUESTED  
DEBT WAIVER. THE SENATOR REQUESTS THAT THE DEPARTMENT \*\*

	Referred To:	Date:	Referred To:	Date:	
(1)	ENR;HARTMAN	02-04-92	(5)		W/IN:
(2)	CIV;GERSON	02-10-92	(6)		
(3)	OLA;RAWLS	02-14-92	(7)		PRTY:
(4)			(8)	LEG;FILES	02-26-92
	INTERIM BY:			DATE:	1
	Sig. For: OLA			Date Released: SEE "9"	OPR:
					MLH

Remarks

\*\* RULE ON THE APPLICATION IN A TIMELY MANNER.  
ORIGINAL LETTER NEVER RECEIVED IN EXEC SEC.  
SEE E.S. 91061410853 - COPY OF CONTROL ATTACHED.  
EXEC SEC SENT COPIES TO OAG, OAG (STEVENS), DAG, CIV, JMD,  
OLA (DeSANCTIS).  
(1) PREPARE RESPONSE FOR THE SIGNATURE OF AAG/RAWLS.  
RETURN TO EXEC SEC, ALONG WITH COPY OF INCOMING LETTER,

Other Remarks:

FOR TRANSMITTAL TO OLA.  
(2) PER CALL FROM CIV, THEY WILL HANDLE THIS ACTION. THEY  
HAVE INFORMED ENR. COPIES OF UPDATE TO ENR, CIV, FILES.  
(3) CIV LETTER FOR REVIEW AND SIGNATURE. MLH

OLA CONTACT: OLA CONTACT: JOE DeSANCTIS (514-2111)  
TJS 02-04-92  
FILE: INDIAN AFFAIRS  
J920204 410

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY  
\*\*\*\*\*





U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

FEB 26 1992

The Honorable Jeff Bingaman  
United States Senate  
Washington, DC 20510-3102

Dear Senator Bingaman:

This is in response to your recent letter concerning the Department of the Interior ("Interior") claim against the Jemez Pueblo. We received Interior's recommendation as to the proper handling of this debt. Following a review of the recommendation and supporting materials, the Department of Justice, by letter dated January 17, 1992, authorized the agency to terminate collection activities.

I hope this information is helpful to you.

Sincerely,

W. Lee Rawls  
Assistant Attorney General



# United States Senate

January 24, 1992

Mr. David Cohen  
Director  
Commercial Litigation Branch  
Civil Division  
Department of Justice  
26 Federal Plaza  
New York City, New York 10007

RECEIVED  
DEPARTMENT OF JUSTICE  
92 FEB -3 P5:48  
EXECUTIVE SECRETARIAT

Dear David:

I was recently notified by the Governor of Jemez Pueblo, Jose R. Toledo, that you are in the process of reviewing the Pueblo's administrative debt waiver application. I appreciate your serious consideration of this important request.

As the enclosed letter to former Attorney General Richard Thornburgh indicates, I have been in previous contact with the department regarding this matter. I am pleased that the Bureau of Indian Affairs recently completed its review of the Pueblo's application and has recommended that the Justice Department terminate all collection activity and grant the requested debt waiver. For the reasons I cite in the enclosed letter, I believe the Pueblo's request is warranted. In light of the Pueblo's precarious financial status, I am especially hopeful that the department will rule on this application in a timely manner. As you can imagine, Pueblo officials are anxiously awaiting a prompt resolution of this situation so that their scarce, and embargoed, resources may be redirected toward providing an array of critically-needed social services.

Thank you for your attention to this crucial matter. I look forward to hearing from you soon.

Sincerely,

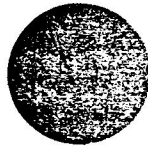
  
Jeff Bingaman  
United States Senator

JB/mh  
Enclosure

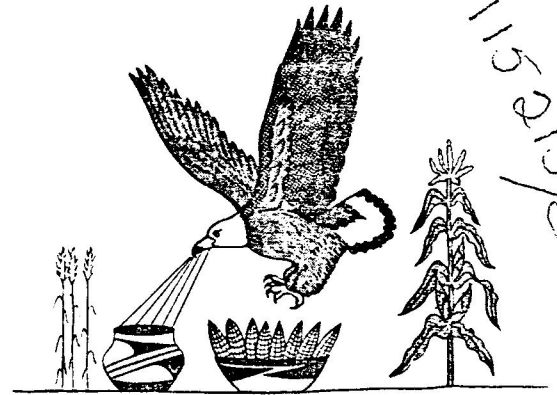
cc Governor Jose R. Toledo  
Attorney General William Barr



W A L A T O W A  
Pueblo of Jemez



BIA  
Y  
Jemez



115215/3

December 6, 1991

Senator Jeff Bingaman  
502 Hart Senate Office Bldg.  
Washington, D.C. 20510

Dear Senator Bingaman:

As you already know, the Bureau of Indian Affairs issued a Bill of Collection which as of October, 1991, totaled \$417,529.14. The Pueblo in response to this bill of collection requested a waiver of the debt and termination of collection activity. The Pueblo's position has been that the Pueblo is not responsible for the debt which occurred because of the Bureau's overpayment to the Pueblo from the Pueblo's trust funds. The Pueblo submitted substantial documentation in support of its request for the debt waiver. The BIA Albuquerque Area Office's litigation report acknowledges its own errors. The report supports the Pueblo with a statement to the Solicitor that debt collection activities have terminated and recommends waiver of the debt claim by the U.S.

On November 29, 1991, Solicitor, Thomas L. Sansonetti, referred the Pueblo's request and the BIA's Litigation Report to Mr. David Cohen, Director of the Commercial Litigation Branch, Civil Division, Department of Justice, with the Bureau's recommendation to terminate collection action on this debt. It is our understanding that Mr. David Cohen will decide whether this debt should be waived and collection activity terminated.

The Pueblo is requesting that all collection efforts against the Pueblo of Jemez be completely terminated and the debt be waived in its entirety including interest. The Pueblos been through a long enduring process in hopes of achieving the only result fair and equitable to the Pueblo of Jemez and parties involved. The Pueblo of Jemez respectfully requests your assistance and request letters of support for termination of collection action from your office to Mr. Cohen. The Pueblo has been dealing with this debt waiver since 1988 and would like to have this matter resolved by the end of this year so that next year's new tribal Governors would not have to deal with this matter.

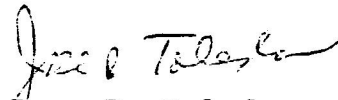


Letter to Senator Jeff Bingaman  
Page 2  
December 6, 1991

If we can provide you with any more information that you may need, please feel free to contact our office or contact David Yepa, Legal Counsel for Jemez Pueblo, at (505) 242-7352.

Sincerely,

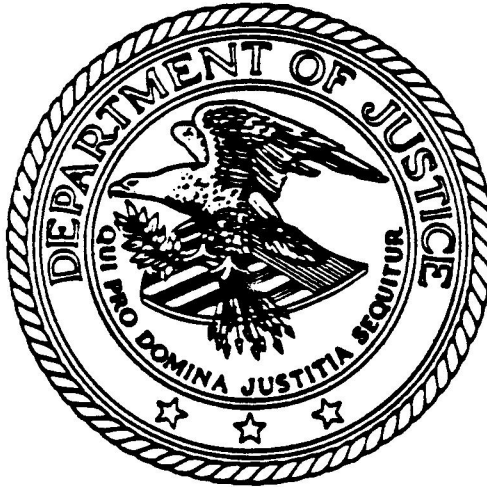
PUEBLO OF JEMEZ

  
Jose R. Toledo,  
Governor

JRT/est



# DOJ EXECUTIVE SECRETARIAT CROSS-REFERENCE RECORD



**CONTROL NUMBER:** 92012301060

MILLER, GEORGE, CONG.

---

THE ENTIRE DOCUMENT PACKET FOR THE CONTROLLED  
CORRESPONDENCE INDICATED BY THE ABOVE EX.SEC.  
CONTROL NUMBER HAS BEEN FILED IN THE FOLLOWING  
PRIMARY FILE LOCATION WITHIN THE SUBJECT FILES  
OF THE ATTORNEY GENERAL.

**PRIMARY FILE:** CONGRESSIONAL/HEARINGS

22 Jan 92



DEPARTMENT OF JUSTICE  
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: HARRIS, LADONNA, AMERICANS FOR INDIAN OPPORTUNITY, WASH., DC  
To: AG. ODD: 02-07-92  
Date Received: 01-23-92 Date Due: 02-07-92 Control #: X92012401110  
Subject & Date

01-14-92 LETTER ADVISING THAT THE DEPARTMENT OF ENERGY  
RECENTLY IMPLEMENTED A NATIONAL INDIAN POLICY. IN THIS  
SPIRIT, THEY HOPE THAT ALL DEPARTMENTS ARE DEVELOPING A  
NATIONAL INDIAN POLICY WITHIN THEIR OFFICE. IF DOJ HAS  
SUCH PERSONNEL FOR INDIAN AFFAIRS, REQUESTS THAT THEY BE  
PROVIDED WITH THE NAME AND ADDRESS SO THAT THEY MAY INCLUDE  
THAT PERSON IN THE ACTIVITIES OF AMERICANS FOR INDIAN  
OPPORTUNITY.

Referred To:	Date:	Referred To:	Date:	
(1) ENR;HARTMAN	01-24-92	(5)		W/IN:
(2)		(6)		PRTY:
(3)		(7)		1Z
(4)		(8)		OPR:
INTERIM BY:		DATE:		CYN
Sig. For: ENR		Date Released: 02-27-92		

Remarks

INFO CC: OAG, DAG.

(1) RETURN CONTROL SHEET WITH COPY OF REPLY TO EXEC. SEC.,  
ROOM 4400-AA.

02-27-92 RESPONSE NO LONGER NEEDED, PER ENR SHIELDS. (TJ)

Other Remarks:

TJS 01-24-92

FILE: INDIAN AFFAIRS

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY  
\*\*\*\*\*



**OFFICERS**

**LaDonna Harris**  
Comanche  
President

**Eddie Tullis**  
Poarch Creek  
Chairman, Poarch Creek  
Vice President

**Elma Patterson**  
Tuscarora  
Indian Affairs Specialist  
New York State B.I.A.-  
Dept. of Social Services  
Secretary

**Mary Jo Butterfield**  
Makah  
Community Service Director  
Treasurer

**BOARD MEMBERS**

**James Abourezk**

**Lionel Bordeaux**  
Rosebud-Sioux  
President, Sinte Gleska College

**Edgar Bowan**  
Coos-Oregon  
Retired Educator

**Phyllis Old Dog Cross**  
Mandan-Hadatsa  
Nursing Consultant  
Regional Mental Health Program

**Andrew Edona**  
Tlingit  
President/CEO for Juneau  
Tlingit-Haida Community Council

**Coy G. Eklund**  
Retired Chairman  
Equitable Life Assurance Society

**Jeanne Givens**  
Coeur D'Alene  
Educator Consultant

**Takuro Isoda**  
President & Chief Executive Officer  
Nippon Investment &  
Finance Co., LTD.  
Daiwa Securities Group Company

**Minerva Jenkins**  
Mohave  
Former Chairman, Ft. Mohave

**Loius LaRose**  
Ute/Winnebago  
Educator

**A. David Lester**  
Creek  
Executive Director  
Council for Energy Resource Tribes

**Charles Lohah**  
Osage  
Retired Educator

**Grace McCullah**  
Navajo  
President, Navajos for  
Navajo Opportunity

**Jerry Muskrat**  
Cherokee  
Federal Administrative Appeals  
Judge

**Joe S. Sando**  
Jemez Pueblo  
Author/Historian

**Harold Tarbell**  
Mohawk  
Chief, St. Regis Mohawk



**Americans for Indian Opportunity**

RECEIVED  
DEPARTMENT OF JUSTICE

92 JAN 23 P3:29

January 14, 1992

EXECUTIVE SECRETARIAT

**William P. Barr**  
Attorney General (actg)  
Department of Justice  
Tenth Street and Constitution Avenue, NW  
Washington, DC 20530

Dear Attorney General Barr,

Recently the Department of Energy implemented a national Indian policy. In this spirit, we hope that all departments are developing a national Indian policy within their office. If you have such personnel for Indian affairs at the Department of Justice, please contact us with the name and address so that we may include him or her in the activities of Americans for Indian Opportunity. I appreciate your cooperation.

Warmest regards,

LaDonna Harris





The Secretary of Energy  
Washington, DC 20585

December 2, 1991

Ms. LaDonna Harris  
President  
Americans for Indian Opportunity  
3508 Garfield Place, N.W.  
Washington, D.C. 20007

Dear Ms. Harris:

I am pleased to announce that the Department of Energy (DOE) has formally adopted an American Indian Policy to guide our relations with the federally-recognized tribes. The comments and suggestions that you provided were most helpful to us in developing this Policy. Suggestions on ways to improve communication and cooperation with tribes and to implement the Policy have been referred to DOE program offices for action, as appropriate.

As I mentioned in my December 20, 1990, letter, the DOE American Indian Policy provides a set of general principles to guide our interactions with Indian tribes. Any new program initiatives will be handled by the departmental program offices. I have directed my program managers to include, as appropriate, specific actions to implement the new Indian Policy in their program planning activities.

In keeping with the government-to-government relationship, the liaison for the Department on Indian matters is the Deputy Assistant Secretary for Intergovernmental and Public Liaison, Deborah Louison.

Enclosed is a copy of the DOE American Indian Policy, my implementation order, and the press release announcing the policy.

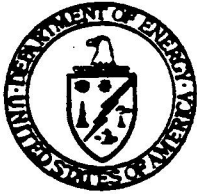
Sincerely,

A handwritten signature in dark ink, appearing to read "James D. Watkins", is written over the typed name and title.

James D. Watkins  
Admiral, U.S. Navy (Retired)

Enclosures





**The Secretary of Energy**  
Washington, DC 20585

NOV 29 1991

**MEMORANDUM FOR GREGG WARD**  
**ASSISTANT SECRETARY**  
**CONGRESSIONAL AND INTERGOVERNMENTAL AFFAIRS**

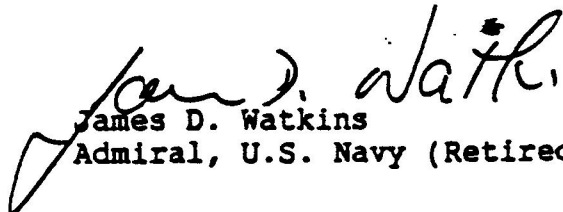
**SUBJECT: DEPARTMENTAL INDIAN POLICY**

I have just approved the American Indian Policy for the Department of Energy. This policy will provide the framework for all departmental activities with federally-recognized tribes. It is fitting that the policy becomes a reality during American Indian Heritage month when we celebrate the many contributions of American Indians to our country.

The Department shares a special relationship with American Indian Tribes on a variety of fronts ranging from the safe, environmentally sound operations of our facilities to the development of human resources in the areas of math, science and engineering. To ensure that the principles of this new policy are institutionalized throughout the Department, they need to be incorporated into the Department's ongoing and long-term planning processes.

To accomplish this, you are directed to develop a DOE Order implementing the Policy, in concert with the Office of Administration and Human Resource Management. The Order should include a directive to the Program Secretarial Officers (PSOs) to implement the Policy and should be ready for my review by December 30, 1991.

A number of suggestions were made by Tribal governments on ways to improve communication and cooperation with tribes and to implement the principles underlying the Indian Policy. You are directed to ensure that these issues are brought to the attention of the appropriate Program Secretarial Officers for discussion and action as appropriate. I expect to be kept apprised of their status.

  
James D. Watkins  
Admiral, U.S. Navy (Retired)

cc: All Program Secretarial Officers



## U.S DEPARTMENT OF ENERGY AMERICAN INDIAN POLICY

### PURPOSE

This policy outlines the principles to be followed by the Department of Energy (DOE) in its interactions with federally-recognized American Indian Tribes. It is based on Federal policy, treaties, Federal law and the DOE's responsibilities as a Federal agency to ensure that tribal rights and interests are identified and considered in pertinent decision-making. The policy provides general guidance to DOE personnel for management actions affecting American Indians and emphasizes implementation of such activities in a knowledgeable and sensitive manner. This policy does not affect DOE interactions with State-recognized Tribes with respect to matters provided for by statute or regulation.

### DEFINITION

INDIAN COUNTRY means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. (18 USCS 1151)

### BACKGROUND

American Indian Tribal Governments have a special and unique legal and political relationship with the Government of the United States, defined by history, treaties, statutes, court decisions, and the U. S. Constitution. The United States has entered into more than 600 treaties and agreements with American Indian Tribes. These treaties and agreements create a variety of legal responsibilities by the United States toward American Indian Tribes and provide the basis for a government-to-government relationship. Other responsibilities toward American Indians are created by Congress through statutory enactments. Although the Department of the Interior, through the Bureau of Indian Affairs, has the principal responsibility for upholding obligations of the Federal Government to American Indians, this responsibility extends to all Federal agencies.



## **POLICY**

1. THE DEPARTMENT RECOGNIZES AND COMMITS TO A GOVERNMENT-TO-GOVERNMENT RELATIONSHIP WITH AMERICAN INDIAN TRIBAL GOVERNMENTS.

DOE recognizes Tribal governments as sovereign entities with, in most cases, primary authority and responsibility for Indian country. In keeping with the principle of American Indian self-government, the Department will view Tribal governments as the appropriate non-Federal parties for making decisions affecting Indian country, its energy resources and environments, and the health and welfare of its populace. The Department will recognize the right of each Tribe to set its own priorities and goals in developing and managing its energy resources. The Department recognizes that some Tribes have treaty-protected interests in resources outside reservation boundaries.

2. DOE RECOGNIZES THAT A TRUST RELATIONSHIP DERIVES FROM THE HISTORICAL RELATIONSHIP BETWEEN THE FEDERAL GOVERNMENT AND AMERICAN INDIAN TRIBES AS EXPRESSED IN CERTAIN TREATIES AND FEDERAL INDIAN LAW.

In keeping with the trust relationship, the DOE will consult with Tribal governments regarding the impact of DOE activities on the energy, environmental and natural resources of American Indian Tribes when carrying out its responsibilities.

3. THE DEPARTMENT WILL CONSULT WITH TRIBAL GOVERNMENTS TO ASSURE THAT TRIBAL RIGHTS AND CONCERNS ARE CONSIDERED PRIOR TO DOE TAKING ACTIONS, MAKING DECISIONS OR IMPLEMENTING PROGRAMS THAT MAY AFFECT TRIBES.

The DOE will take a proactive approach to solicit input from Tribal governments on departmental policies and issues. The Department will encourage Tribal Governments and their members to participate fully in the national and regional dialogues concerning departmental programs and issues.

4. CONSISTENT WITH FEDERAL CULTURAL RESOURCE LAWS AND THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT (P.L. 95-341), EACH FIELD OFFICE OR DOE INSTALLATION WITH AREAS OF CULTURAL OR RELIGIOUS CONCERN TO AMERICAN INDIANS WILL CONSULT WITH THEM ABOUT THE POTENTIAL IMPACTS OF PROPOSED DOE ACTIONS ON THOSE RESOURCES AND WILL AVOID UNNECESSARY INTERFERENCE WITH TRADITIONAL RELIGIOUS PRACTICES.



DOE will comply with all cultural resource legislation and implementing regulations in the management and operation of its programs and facilities. Consultation with appropriate American Indian tribal governments is part of the compliance process involving Federal cultural resource laws and the American Indian Religious Freedom Act. Consultation may include, but is not limited to 1) the exchange of information concerning the location and management of cultural resources, 2) repatriation or other disposition of objects and human remains, 3) access to sacred areas and traditional resources located on DOE lands in accordance with safety, health and national security considerations, and 4) assessment of potential community impacts.

5. THE DEPARTMENT WILL IDENTIFY AND SEEK TO REMOVE IMPEDIMENTS TO WORKING DIRECTLY AND EFFECTIVELY WITH TRIBAL GOVERNMENTS ON DOE PROGRAMS.

DOE recognizes that there may be regulatory, statutory and/or procedural impediments which limit or restrict our ability to work effectively and consistently with Tribes. In keeping with this policy, we will seek to remove any such impediments. Additionally, we will, to the maximum extent permitted by law, apply existing statutory, regulatory and procedural requirements in a manner that furthers the goals of this policy.

6. THE DEPARTMENT WILL WORK WITH OTHER FEDERAL AND STATE AGENCIES THAT HAVE RELATED RESPONSIBILITIES TO CLARIFY THE ROLES, RESPONSIBILITIES AND RELATIONSHIPS OF OUR RESPECTIVE ORGANIZATIONS AS THEY RELATE TO TRIBAL MATTERS.

DOE will seek and promote cooperation with other agencies that have related responsibilities. In many areas of concern to DOE, cooperation and mutual consideration among neighboring governments (Federal, State, Tribal and local) is essential. Accordingly, DOE will encourage early communication and cooperation among all governmental parties. This recognizes that the principle of comity among equals and neighbors often serves the best interests of all parties.

7. THE DEPARTMENT WILL INCORPORATE THIS POLICY INTO ITS ONGOING AND LONG-TERM PLANNING AND MANAGEMENT PROCESSES.

It is key to this effort to ensure that the principles of this policy are effectively institutionalized by incorporating them into the Department's ongoing and long-term planning and management processes. Department managers will include specific programmatic actions designed to facilitate tribal participation in Departmental program planning and activities.

*James D. Watkins*  
James D. Watkins



**MEMORANDUM OF UNDERSTANDING  
AMONG THE  
BUREAU OF INDIAN AFFAIRS  
ENVIRONMENTAL PROTECTION AGENCY  
HOUSING & URBAN DEVELOPMENT  
AND  
INDIAN HEALTH SERVICE**

**I. Statement of Purpose**

The Bureau of Indian Affairs (BIA), the Environmental Protection Agency (EPA), the Department of Housing & Urban Development (HUD) and the Indian Health Service (IHS), all have responsibilities and interests pertaining to the protection of the environment and human health as it relates to pollution control on Indian lands. It is the purpose of this Memorandum of Understanding (MOU) to identify areas of mutual interest and responsibility of the four agencies and to encourage the coordination of the agencies' respective activities to promote the most efficient and integrated utilization of resources. It is anticipated that the Regional and Area Offices of the respective signatory agencies may desire to develop more specific MOUs pursuant to the general agreements established in this document

**II. Findings**

**A. Scope of Respective Authorities**

All of the agencies have interest in the effects on human health and the environment from pollutants. As a result, each agency conducts or supports environmental health activities in one or more of the following areas:

Air Quality Management  
Radiation Hazard Identification and Mitigation  
Water Quality and Critical Habitat Management  
Surface Water, Ground Water & Drinking Water Protection  
Underground Storage Tanks  
Hazardous Materials Management, Emergency Response and  
Solid Waste Management



Pesticides & Toxic Substance Use and Management and Endangered  
Species Protection

B. Description of Agency Mission

(It is to be noted that BIA, HUD, and IHS are neither regulatory nor enforcement agencies on environmental matters while EPA is.)

1. BIA's programs are associated with Indian trust resources and include environmental quality through the authority of the trust, and the National Environmental Policy Act of 1969, which establishes procedures that are binding on all Federal agencies. The primary requirement is that an Environmental Impact Statement (EIS) be prepared for every major Federal action significantly affecting the quality of the human environment. BIA must also apply the Council on Environmental Quality's (CEQ) regulations and the Department of the Interior's implementation procedures. BIA is responsible for assuring that all of its projects comply with all applicable statutes, whether or not projects are Federally initiated or EPA has enforcement authority. BIA must also comply with all laws related to cultural resources and threatened and endangered species.

2. EPA has regulatory and enforcement authority on Indian reservations and authority to expend financial resources on Indian lands under various environmental statutes. Statutes authorizing EPA actions on Indian lands include the Clean Air Act (CAA), Clean Water Act (CWA), the Emergency Planning and Community Right to Know Act (EPCRA), Federal Insecticide, Fungicide and Rodenticide Act



(FIFRA), Resource Conservation and Recovery Act (RCRA), Safe Drinking Water Act (SDWA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended, and the Toxic Substances Control Act (TSCA). EPA expects that the Clean Air Act will be amended in 1990 to include authority to treat tribes as states for air quality purposes and to authorize the Administrator to promulgate rules implementing this authority. EPA will either retain its appropriate environmental management authorities or authorize Tribal governments on Indian lands to administer their own regulatory programs on a case by case basis depending upon the language of the particular statute and tribal capability with appropriate consideration for the special needs of tribal governments. The programs will be operated in a manner consistent with the provisions of the EPA Indian Policy and Implementation Guidance which were issued on November 8, 1984. EPA is also responsible for NEPA compliance for its projects on Indian lands.

3. HUD provides financial and technical assistance, under the United States Housing Act of 1937 as amended, in the development and management of low income housing in Indian and Alaska Native areas. This includes funding for appropriate sanitation facilities for HUD assisted housing projects. HUD conducts a Community Development Block Grant (CDBG) program which is available to tribes. For its projects on Indian lands, HUD insures the compliance of Indian Housing Authority (IHA) with all requirements of NEPA, Section 1091 of the Stuart B. McKinney, Homeless Assistance Amendments Act, the Clean Water Act, and the



requirements to ban lead in water plumbing and distribution pipes contained in the Safe Drinking Water Act.

4. IHS has the primary responsibility for improving the health of and preventing disease and injuries among the American Indian and Alaska Native population through the development and implementation of a comprehensive environmental health program on Indian lands. The Division of Environmental Health (DEH) of the IHS conducts activities dealing with air pollution, community injury prevention, emergency operations, epidemiology, food protection, hazardous materials, home and community health, institutional environmental health, occupational health, operation and maintenance assistance, radiation, recreational sanitation, safety, vector control, waste disposal (including solid waste), and water supply. These activities include surveys, technical assistance, investigations, sampling, training, control and construction. The DEH may carry out these activities directly, or the tribes may undertake them with the assistance of IHS, under the Indian Self-Determination Act, P.L. 93-638 as amended. The purpose of the IHS Sanitation Facilities Construction Program (authorized by P.L. 86-121, the Indian Sanitation Facilities Act and reaffirmed by P.L. 100-713, the Indian Health Care Amendments of 1988) is to take direct action to provide sanitation facilities that improve the health status of Native Americans. These facilities can include water supply, sewage treatment or solid waste management systems. IHS does not operate or maintain community water, sewage or solid waste facilities, but provides training and technical



assistance and may provide the necessary equipment in conjunction with new facilities or major renovation projects for Indian tribes to perform these activities. IHS prepares NEPA compliance documents for its projects on Indian lands.

C. Areas of Primary Mutual Interest

Listed below are specific program areas of special interest to BIA, EPA, HUD and IHS. General responsibilities are outlined under each area.

1. Air Quality Management

- a. BIA - Technical Assistance, Coordination with EPA/Tribes
  - Provides some funding for Air Monitoring
- b. EPA - Provides technical assistance and training for planning and management activities
  - Provides monitoring and assessment of air quality on Indian lands
  - Provides Section 105 (Clean Air Act) grant assistance to tribes and demonstration grants for Indoor Radon Abatement
  - Provides assistance in implementing the Prevention of Significant Deterioration on Indian Lands
- c. HUD - IHA Compliance with Tribal or Local Construction Standards which Includes Assuring Wood or Coal Stoves Meet Appropriate Air Quality Standards



- d. IHS - Investigation of Potential Health Problems, Monitoring, Technical Assistance, Compliance with Local Construction Standards
  - e. Potential Overlap
    - Technical Assistance (BIA, EPA, IHS)
    - Monitoring (EPA, IHS, BIA)
2. Radiation Hazard Identification and Mitigation
- a. BIA - Technical Assistance, Coordination with EPA/Tribes, Monitors Radionuclides in BIA Operated Systems, Considers Potential Problems such as Radon in Home Design
    - Conducts Studies in accordance with the Radon Abatement Act of 1988
  - b. EPA - Tribes may be Included in the National Household Radon Survey
    - May Provide Canisters & Technical Assistance for Tribes or IHS to Conduct Radon Surveys As Resources Permit
    - Provides Consultation on Appropriate Radon Remediation Activities
    - Provides Assistance in Monitoring of Radionuclides in Water and Radioactive Releases in General
    - Provides Training to Tribes and other agencies in Radon Remediation
    - Provides Technical Assistance and



Consultation on Releases of Radioactive materials

- c. HUD
  - Considers EPA/IHS Recommendations for Site Approval
  - Considers EPA/IHS Recommendations on Radon.
  - Develops a Policy Based on EPA Guidelines to Prevent Harm to Human Health from Radon Exposure
- d. IHS
  - Assistance in Radon Surveys of Homes on Reservations
  - Provides Technical Assistance on All Radiation Issues
  - Conducts Surveys of IHS owned facilities in accordance with the Radon Abatement Act of 1988
  - Assistance in Monitoring of Natural Radiation Sources
  - Performs Compliance Testing of Radiation Equipment in Health Care Facilities
  - Provides Training
  - Assists Tribes in initial Monitoring of Radionuclides in Water
- e. Potential Overlap
  - Technical Assistance (BIA, EPA, IHS)
  - Radon Surveys (EPA, IHS)



- Radon Abatement Surveys (BIA)
- Monitor Radionuclides in Water (BIA)

### 3. Water Quality and Critical Habitat Management Water Supply Systems, Waste Treatment, Surface Water, Groundwater, Drinking Water Protection and Habitat Management

#### a. BIA -

#### General Activities

- Sampling, Testing and Monitoring of  
Water and Ground Water for Water Quality  
Quantification Studies, for  
Livestock, Wildlife, Instream  
Municipal, Industrial Recreation  
Cultural and Diversionary Treatment
- Operation and Maintenance (O&M) of  
Facilities
- WSS and WWT for BIA School/Age
- Provides Training to Tribes for  
Management
- Provides Technical Assistance  
Consultation on Tribal Jurisdiction

#### Safe Drinking Water Act

- Inventory and Maintenance of Water  
for BIA School/Facilities



- Coordinate with EPA and other Agencies on Underground Injection Control Direct Implementation Programs

#### Clean Water Act

- Technical Assistance to Tribes in Defining a Scope of Work as Part of an Application for EPA 106 Funds
- Assists Tribes in Obtaining EPA Section 402 and 404 Permits
- Develops Best Management Practices (BMPs) for Control of Non-Point Source Pollution on Trust Lands

b. EPA -

#### General Activities

- Assist Tribes in Developing Tribal Capacity to Regulate
- Direct Implementation for Tribes not Meeting Statutory Requirements for Treatment as a State or not Seeking Authorization to Implement EPA Programs in Balance with other Agency Priorities
- Training of Tribal Staff in Water Quality Monitoring Procedures
- Maintenance of Ground Water and Surface Water Quality Data
- Provide Funds for Demonstration Projects



### Safe Drinking Water Act

- Regulates Public Water Systems (PWS) or authorizes Tribes Treated as States to Assume Primary Enforcement Responsibility and can Provide Tribal Grants to Tribes Treated as States
- Sole Source Aquifer Protection
- Underground Injection Control Program  
Implementation: Authorizes Tribes Treated as States to Assure Primary Enforcement Responsibility and Can Provide Tribal Grants to Tribes Treated as States
- Well Head Protection
- Works With Tribes in Developing Safe Drinking Water Programs

### Clean Water Act

- National Pollutant Discharge Elimination System (NPDES) Permits
- Clean Lakes Programs
- Enforcement & Regulation of Surface Water Standards
- Wetlands Protection
- Section 401 Permit and License Certification
- Non-Point Source Pollution Prevention
- Works with Tribes in the Development of Tribal Water Quality Programs and Authorizes



Tribes Treated as States to Carry out  
Appropriate Functions

- Award Tribes Treated as States 106 Water  
Quality Management Grants
- Waste Water Treatment System Construction  
Grants

c. HUD -

General Activities

- Funds On-Site Sanitation Systems for HUD  
Assisted Housing Through Housing Authorities
- Water and Sewage Project Funding through CDBG  
Program
- Provides Funds to IHS under Agreement  
with HUD and the Housing Authorities for  
Construction of Off-site Sanitation  
Facilities Which May Include Equipment for  
Operation and Maintenance Activities
- Bans Lead in Water and Distribution Pipes,  
Solder and Flux in HUD Assisted Property
- Requires Funded Housing Projects to comply  
with Wetlands Provisions of the Clean Water  
Act

d. IHS -

General Activities

- Off-site Sanitation Facilities



#### Construction for HUD Homes

- Construction of Sanitation Facilities for BIA Housing Improvement Program (HIP), Tribally Funded Programs, and Existing Homes (On and Off-Site Facilities)
- Well Construction
- Technical Assistance for On-site Water and Sewer Facilities
- Assist Tribes in Obtaining EPA Permits
- Technical Assistance to Tribes to Address Provisions of SDWA & CWA
- Training of Homeowners
- Conducts Special Studies Such as Utility Rate Studies
- Provides Technical Assistance in the Establishment of O & M Organizations, As Well As, Equipment and Tools for O&M
- Surveys of Indian and BIA Water and Waste Water Systems
- Maintenance of Data System for Sanitation Facilities

#### Safe Drinking Water Act

- Design and Construction of Drinking Water Facilities, Distribution and Storage Facilities for Domestic Use
- Training of Tribal Staff in Operation and



## Maintenance of Sanitation Facilities

### Clean Water Act

- Design and Construct Waste Water Collection, Treatment and Disposal Facilities for Domestic Use
- Training of Tribal Staff in O&M of Sanitation Facilities

#### e. Potential Overlap

- Water Quality Testing as Appropriate or Required (BIA, EPA, IHS)
- Funding Wastewater Facilities (EPA, HUD, IHS,)
- Funding of Domestic Drinking Water Facilities (HUD, IHS)
- Assistance in Obtaining Additional Sources of Funding (BIA, EPA, IHS)
- Technical Assistance to Address Provisions of SDWA and CWA (BIA, EPA, IHS)
- Assist Tribes in Obtaining EPA Section 402 and 404 Permits (BIA, EPA, IHS)
- Assist Tribes in Identifying BMPs for Protection of Water Quality/Water Supplies (BIA, EPA, IHS)
- Critical Habitat Management (BIA, EPA)
- Maintenance of Water Quality Data (BIA, EPA, IHS)



- Assist Tribes in Applying for EPA Grant Programs (BIA, EPA, IHS)

#### 4. Underground Storage Tanks

- a. BIA - Inventory Underground Storage Tanks (UST) Owned or operated by BIA
  - Monitoring of EPA's UST Pilot Projects
- b. EPA - Implement Subtitle I of RCRA
  - Leaking Underground Storage Tank Trust Fund Supported Enforcement and Corrective Action Activities
- c. HUD - None
- d. IHS - Inventory of UST Owned or operated by IHS
  - Monitor EPA's UST Pilot Projects and UST Corrective Actions (with EPA and Tribes)
- e. Potential Overlap
  - Inventory of UST's (BIA, EPA, IHS)
  - Monitoring of EPA's UST Pilot Projects and UST Corrective Actions (BIA, EPA, IHS)

#### 5. Hazardous Materials Management, Emergency Response and Community Right-to-Know

- a. BIA - Technical Assistance, Surveys, Testing, Monitoring, Facilitate Non-National Priority List (NPL) Cleanup, Emergency Response
- b. EPA - Enforcement, NPL Cleanups, Emergency Response, Pre-remedial Evaluation, Cooperative Agreements with Tribes, Technical



Assistance

- Delegation of Hazardous Waste Programs to Qualified Tribes
  - Training of Tribal Staff
  - Provides Technical Assistance to Tribes Including Consultation Concerning the Development of Tribal Implementation of the Emergency Planning and Community Right to Know Act
  - Conducts Community Relations Activities at Superfund Sites
- c. HUD - Require the Indian Housing Authority, Their Contractors and Agents on HUD Assisted Housing Projects to Comply with Local Standards Which Could Include Disposal of Some Hazardous Materials
- d. IHS - Technical Assistance
- Surveys & Testing
  - Emergency Response which is Limited to such Activities as Identification, some Monitoring, Surveillance, etc.
  - Identifying and Monitoring Hazardous Waste Streams in Health Care Facilities Including Infectious Waste Disposal
  - Training of IHS and Tribal Staff Regarding Hazardous Materials, Including the Community



and Worker Right-To-Know Laws

e. Potential Overlap

- Technical Assistance (BIA, EPA, IHS)
- Testing and Site Assessment (BIA, EPA, IHS)
- Emergency Response (BIA, EPA, IHS)
- Cooperation on Operation and Maintenance of Superfund Remedies (BIA, EPA, IHS)

6. Solid Waste Management

- a. BIA
  - Technical Assistance to Tribes (usually tribally owned and operated facilities)
  - Operates Sites at Some BIA Facilities
- b. EPA
  - Sets National Standards for Sanitary Landfills Design and Operation
  - Technical Assistance and Training
  - Technical Assistance on Solid Waste Management
  - Technical Assistance on Solid Waste Program and Regulation Development
  - Limited Grant Support for Tribal Solid Waste Management Planning
- c. HUD
  - Solid Waste Project Funding Through Community Development Block Grants
  - Funding for Pro Rata Share of Solid Waste Facilities to Serve HUD Assisted Housing Projects
- d. IHS
  - Assists Tribes in Development of Solid Waste



#### Management Plans

- Provides Funding as Resources Permit for Solid Waste Projects
- Assists Tribes in Identifying and Obtaining Funds from Other Sources
- Surveys of Solid Waste Disposal Sites Including BIA Operated Sites
- Surveys of Solid Waste Management Needs
- Training and Technical Assistance in the Operation of Solid Waste Management Projects

#### e. Potential Overlap

- Technical Assistance (BIA, EPA, IHS)
- Solid Waste Management Plan Assistance (BIA, EPA, IHS)
- Funding of Solid Waste Projects (HUD, IHS)

### 7. Pesticides & Toxic Substance Use and Management

- a. BIA - Approvals for the use of Restricted Use Pesticides, Training of Pesticide Applicators, Review of Pesticide Use Patterns, and Ensure Protection of Endangered Species
- Asbestos Surveys and Remedial Action in BIA School
- b. EPA - Regulation of Pesticides and Chemical Substances



- Cooperative Agreements Grants to Qualified Indian Organizations and Individual Tribes where Required Authorities Exist for Enforcement and Pesticide Applicator Certification
  - Grants to Remove Asbestos from Indian Schools
  - Training for Enforcement Inspectors
  - Endangered Species Protection Compliance, Groundwater Protection, and Agricultural Worker Protection
- c. HUD - Require IHA to comply with Lead-Based Paint Hazard Elimination Rule of June 6, 1988 and Section 1088 of the McKinney Amendments Act of 1988
- d. IHS - Asbestos Monitoring in IHS and Tribal Facilities as Appropriate
- Remedial Action in IHS Facilities
  - Technical Assistance Regarding Pesticide Usage and Disposal and Endangered Species Protection
- e. Potential Overlap
- Asbestos (BIA, EPA, IHS)
  - Pesticides (BIA, EPA)
  - Endangered Species Protection Groundwater Protection, Worker Protection (EPA, BIA, IHS)



### III. Interagency Actions

The following actions are agreed to:

1. BIA, EPA, HUD, and IHS will work cooperatively with each other at Headquarters and in the Regions/Areas, and in close consultation with tribal governments, to coordinate environmental programs affecting Indian lands. Where applicable, and within the constraints of available resources, each agency will:
  - a. Participate in headquarters, regional and local level information exchanges to keep abreast of the other agencies' program activities and regulations and notify other agencies of its own program activities, regulations and future plans.
  - b. Cooperate in providing program services to tribal governments.
  - c. Provide training and technical assistance to each other and to Tribal representatives in the area of each agency's special expertise.
  - d. Collaborate on overlapping responsibilities.
  - e. Coordinate to the greatest extent possible and integrate where feasible, the provision of funding assistance to tribal governments, where the funding authorities of the four agencies are combined or complementary.
2. BIA, EPA, HUD, and IHS will continue to identify and develop



coordination in these areas of environmental protection. Supplemental agreements or actions specific to program coordination in each of the above areas may be prepared, as appropriate. Potential overlap areas may be addressed at the area/region or headquarters levels.

3. BIA, EPA, HUD, and IHS will encourage and educate their staffs in the use and implementation of the terms of this MOU. Where applicable, tribal and/or state agencies may be included as signatories to supplemental agreements.

#### IV. Duration of Agreement

This MOU shall continue in effect until BIA, EPA, HUD or IHS provides written notice of termination. Notice shall be given to the other parties at least thirty (30) days in advance of the termination date. This document may be updated and periodically amended with the concurrence of all parties. This document does not cancel any previous MOUs or Agreements.

#### V. Reports

No routine reports are required. However, quarterly meetings will be called by BIA at headquarters and held among the parties to discuss implementation of this MOU. Additional meetings may be called as necessary by any signatory agency. Minutes will be taken and distributed. Where appropriate, BIA may also call quarterly meetings at the Area/Regional where all parties are in agreement



that such meetings would be beneficial. Minutes of those meetings will also be taken.

*Eddie F. Brown*

Assistant Secretary - Indian Affairs

NOV 19 1990  
Date

*Myrl A. Allen*

Deputy Administrator - Environmental Protection Agency

JAN 15 1991  
Date

*William B. Blum*

Assistant Secretary for Public and Indian Housing

6/21/91  
Date

*James H. Roderick*

Director, Indian Health Service

13 May 91  
Date

*P. L. Ruth Bandach*

ACTING Assistant Secretary for Community Planning  
and Development

6/13/91  
Date



# DOJ EXECUTIVE SECRETARIAT CROSS-REFERENCE RECORD



**CONTROL NUMBER:** 92011700788

INOUYE, DANIEL K, SENATOR

---

THE ENTIRE DOCUMENT PACKET FOR THE CONTROLLED  
CORRESPONDENCE INDICATED BY THE ABOVE EX.SEC.  
CONTROL NUMBER HAS BEEN FILED IN THE FOLLOWING  
PRIMARY FILE LOCATION WITHIN THE SUBJECT FILES  
OF THE ATTORNEY GENERAL.

**PRIMARY FILE:** CONGRESSIONAL/HEARINGS

9 Jan 92



# DOJ EXECUTIVE SECRETARIAT CROSS-REFERENCE RECORD



**CONTROL NUMBER:** 92011500594

BARNETT, MARK, AG of S. Dak

---

THE ENTIRE DOCUMENT PACKET FOR THE CONTROLLED  
CORRESPONDENCE INDICATED BY THE ABOVE EX.SEC.  
CONTROL NUMBER HAS BEEN FILED IN THE FOLLOWING  
PRIMARY FILE LOCATION WITHIN THE SUBJECT FILES  
OF THE ATTORNEY GENERAL.

**PRIMARY FILE:** SUPREME COURT

7 Jan 92



DEPARTMENT OF JUSTICE  
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: WILLIE, WES, TEEC NOS POS, NAVAJO NATION (ARIZONA)  
To: AG. ODD: 01-21-92  
Date Received: 01-03-92 Date Due: 01-21-92 Control #: X92010600144  
Subject & Date

01-03-92 LETTER (FAX COPY) ADVISING THAT LOCAL UNION 798  
IS CURRENTLY OPERATING ON THE NAVAJO NATION ON SOME  
PIPELINE EXPANSION PROJECTS FOR EL PASO NATURAL GAS AND  
TRANSWESTERN PIPELINES, INC. ALLEGES THAT UNION 798 IS NOW  
OPERATING IN THE NAVAJO NATION WHILE VIOLATING THE LAWS OF  
THE NAVAJO, THE CIVIL RIGHTS ACT OF 1964, AND THEIR OWN  
PIPELINE AGREEMENT; WITH ATTACHMENT.

	Referred To:	Date:		Referred To:	Date:	
(1)	CRT;DUNNE	01-06-92	(5)			W/IN:
(2)			(6)			
(3)			(7)			PRTY:
(4)			(8)			1Z
	INTERIM BY:			DATE:		OPR:
	Sig. For: CRT			Date Released: 02-10-92		MAU

Remarks

INFO CC: OAG, DAG, ENR.

(1) RETURN THIS CONTROL SHEET WITH A COPY OF THE RESPONSE TO  
EXEC. SEC., ROOM 4400-AA.

02-10-92 CRT REPLIED BY LETTER DATED 02-06-92. (TJ)

Other Remarks:

OLA CONTACT:

LJB 01-06-92

FILE: INDIAN AFFAIRS

CROSS REFERENCES:

1. UNIONS/General

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY  
\*\*\*\*\*

3 JANUARY 92





U.S. Department of Justice

Civil Rights Division

JRD:RSU:RSL:dp  
DJ 170-59N-0

*Employment Litigation Section*  
*P.O. Box 65968*  
*Washington, D.C. 20035-5968*

**FEB 6 1992**

Mr. Wes Willie  
P.O. Box 863  
Teecnospos, Navajo Nation 86514

Dear Mr. Willie:

This letter is in reply to your recent correspondence addressed to the United States Attorney General. In your letter, you complain that Local Union 798, which is currently working in the Navajo Nation on various pipeline projects for El Paso Natural Gas and Transwestern Pipelines, Inc., is violating Title VII of the Civil Rights Act of 1964, as amended.

Title VII prohibits discrimination based upon race, sex, religion and national origin. The Act designates the Equal Employment Opportunity Commission as the federal agency responsible for investigating and, where appropriate, litigating charges of discrimination filed against private employers, including unions. The Department of Justice's authority under Title VII is limited to allegations of discrimination filed against state and local government employers. This Department is, therefore, without statutory jurisdiction to be responsive to the matters raised in your correspondence.

If you have not already done so, you should bring this matter to the attention of the EEOC at:

Equal Employment Opportunity Commission  
4520 N. Central Ave., Suite 300  
Phoenix, AZ 85012-1848  
(602) 640-5000

You may also wish to consult with a private attorney of your own choosing to determine what other remedies, if any, may be available to you.

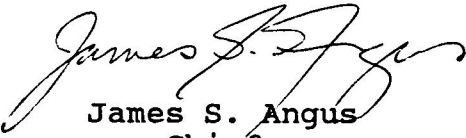


We regret that we are unable to be of further assistance in this matter.

Sincerely,

John R. Dunne  
Assistant Attorney General  
Civil Rights Division

By:

  
James S. Angus  
Chief  
Employment Litigation Section



Wes Willie  
P.O. Box 863  
Teecnospos, Navajo Nation 86514  
January 03, 1992

William P. Barr, U.S. Attorney General  
10th Constitution Ave.  
Washington, DC 20530

Dear Sir:

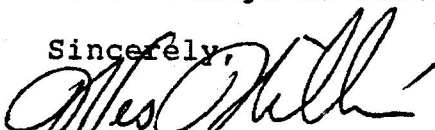
Local Union 798 is currently operating on the Navajo Nation on some pipeline expansion projects for El Paso Natural Gas and Transwestern Pipelines Inc. Cliff Throneberry and Buddy Kervin of Local Union 798 had been made aware of the labor laws of the Navajo Nation when they first had their people start entering the Navajo jurisdiction. This was done by way of pre-job conferences, letters from the Indian Nation, and also individual Indians informing them of the labor laws and the possibility of criminal statutes being violated (18 U.S.C. sec. 241 & 242). Nevertheless, this Union started violating the Navajo Nation labor laws and the rights of Navajos under those laws. This is currently ongoing and is now quite evident from the record that these violations have not been unintentional but has been carried out under a planned effort.

The Navajos have signed a treaty with the United States wherein a mutual agreement of peace has been pledged by both parties. The United States has also pledged their friendship and protection in return for lands ceded to them by the Navajos. The Treaty of the Navajos, 1868 also has a provision for the removal of unfriendly individuals from the Navajo Nation.

Local 798, the pipeliner union operating out of Tulsa, Oklahoma has already lost a discrimination lawsuit initiated by the E.E.O.C. on behalf of Blacks and women back in 1986. The legal proceedings took place in the U.S. district court in Tulsa, Oklahoma. This same 798 is now operating in the Navajo Nation while violating the laws of the Navajo, while in violation of the Civil Rights Act of 1964 and while in violation of their own pipeline agreement and the United Associations constitution causing picket lines to form.

For more information contact the Office of Navajo Labor Relations in Window Rock, Navajo Nation. (602)871-6800 or William Nakai of the Human Resources Department with the Navajo Nation who is in charge of O.N.L.R.

Sincerely,

  
Wes Willie

RECEIVED  
DEPARTMENT OF JUSTICE  
92 JAN -3 P3:15  
EXECUTIVE SECRETARIAT



cc: E.E.O.C.  
Attention: Director Ronald Blumenthal  
1801 L St.  
Washington, DC 20507

Bureau of Indian Affairs  
Eddie F. Brown, Director  
Mailstop 4140  
1849 C St. NW  
Washington, DC 20240

Marvin Boede, General President  
United Association  
901 Massachusetts Ave. NW  
Washington, DC 20001



# Feds seek more Navajo litigation on civil rights

By Richard Sitts  
Dine Bureau

WINDOW ROCK, Ariz. — Federal civil rights officials visited Navajoland Friday with plans to protect the rights of individuals and to crack down on violators.

U.S. Assistant Attorney General John R. Dunne and Jim Schermerhorn, from the Civil Rights Division of the U.S. Justice Department, visited with Navajo President Peterson Zah, Attorney General Donna Christensen, and local reporters.

Dunne said the trip to Navajoland came about not because of a new interest in protecting the rights of Native Americans, but rather to reaffirm an earlier commitment.

This latest initiative is intended to increase the number of civil rights cases filed by the U.S. Justice Department on behalf of American Indians.

Dunne identified the four main civil rights areas as voting, employment, housing and credit, and educa-

tion.

Any redistricting or other changes in voting laws that dilutes voting power or discriminates against voting individuals will be challenged, Dunne said.

"We will not do any negotiating, but we are open to discussing voting matters with local governments and legislatures," he added. "We don't have the authority to do that, but just to say what is and isn't acceptable. We're advisors, not negotiators."

Once a matter is referred to the department, an investigation by the Federal Bureau of Investigation will begin and civil rights attorneys will determine if a civil suit or criminal prosecution will be pursued, Dunne said.

If the evidence of a violation exists, suits will be brought against non-Indians and Indians alike.

A negotiated settlement between the parties is encouraged because it usually is in the best interests of all concerned, Schermerhorn said.

Christensen said the tribe has supported the U.S. Justice Department's efforts to guarantee the civil rights of individual Navajos and will continue to do so.

In the Four Corners region, every major case brought by the department during the past decade was won, Schermerhorn said. Of about 10 cases, most involved voting or employment rights. Many were settled out of court, he added.

Employment suits filed against the cities of Gallup and Farmington were both successful, Schermerhorn said. Large amounts of backpay were won in both cases, with 223 individuals paid in the Gallup case.

Efforts will be made at the chapter level to educate Navajos of their civil rights, Zah said, recalling an earlier effort by DNA Legal Services.

"We're going to pick up that education policy, dust it off and go back out to the chapters and school districts and let the people know of their rights," Zah said.





# THE NAVAJO NATION

P. O. BOX 308 • NAVAJO NATION • WINDOW ROCK, ARIZONA 86515 • (602) 871-4941

PETERSON ZAH  
PRESIDENT

MARSHALL PLUMMER  
VICE PRESIDENT

## Facsimile Transmittal Form

Transmittal To : William P. Barr  
Company Name : U.S. Attorney General  
Fax Number : 202-514-4371  
Total Pages : 4 (Including Cover Page)

\*\*\*\*\*

From : Wes Willie

Department Name : Records and Communications

Date : 01/03/92 Time: \_\_\_\_\_

\*\*\*\*\*

COMMENTS:



# DOJ EXECUTIVE SECRETARIAT CROSS-REFERENCE RECORD



**CONTROL NUMBER:** 92010300124  
RACICOT, MARC AG of Montana

---

THE ENTIRE DOCUMENT PACKET FOR THE CONTROLLED  
CORRESPONDENCE INDICATED BY THE ABOVE EX.SEC.  
CONTROL NUMBER HAS BEEN FILED IN THE FOLLOWING  
PRIMARY FILE LOCATION WITHIN THE SUBJECT FILES  
OF THE ATTORNEY GENERAL.

**PRIMARY FILE:** AG MEETINGsREQUESTs-OFFICIAL U.S.  
2 Jan 92



DEPARTMENT OF JUSTICE  
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: INOUE, SENATOR DANIEL K. CHMN, SELECT COMTE/INDIAN AFFAIRS  
To: AG. ODD: 02-14-92  
Date Received: 01-31-92 Date Due: 04-09-92 Control #: X920203017219  
Subject & Date

12-12-91 LETTER (RECEIVED IN EXEC SEC ON 01-31-92) FROM THE  
CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS, REQUESTING AN  
INVESTIGATION INTO A RECENT ACTION OF THE BUREAU OF ALCOHOL,  
TOBACCO, AND FIREARMS, INVOLVING THE CONFISCATION OF EQUIP-  
MENT, RECORDS, DOCUMENTS AND ENTIRE INVENTORIES OF INDIAN  
SMOKE SHOPS IN THE STATE OF WASHINGTON. THE CHAIRMAN  
EXPRESSES HIS CONCERNS WITH THE DETAINING OF PERSONS WITHOUT  
AN ARREST WARRANT AUTHORIZING SUCH DETENTION AND THE \*\*

Referred To:	Date:	Referred To:	Date:	
(1) OLA;RAWLS	04-09-92	(5)		W/IN:
(2)		(6)		
(3)		(7)		PRTY:
(4)		(8)		1
INTERIM BY:		DATE:		OPR:
Sig. For: AG.		Date Released: 04-14-92		MLH

Remarks

(1) CRM CORRECTED LETTER FOR REVIEW AND SIGNATURE.MLN  
04-14-92. AAG RAWLS SIGNED LETTER WHICH WAS DATED 04-14-92  
IN EXEC SEC AND DELIVERED TO HILL VIA OLA MESSENGER.  
COPIES TO CRM, AG FILES, LEGISLATIVE FILES.MLN

Other Remarks:

FILE: INDIAN AFFAIRS

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY  
\*\*\*\*\*



DEPARTMENT OF JUSTICE  
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: INOUE, SENATOR DANIEL K. CHMN, SELECT COMTE/INDIAN AFFAIRS  
To: AG. ODD: 02-14-92  
Date Received: 01-31-92 Date Due: 04-09-92 Control #: X92020301721  
Subject & Date

12-12-91 LETTER (RECEIVED IN EXEC SEC ON 01-31-92) FROM THE  
CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS, REQUESTING AN  
INVESTIGATION INTO A RECENT ACTION OF THE BUREAU OF ALCOHOL,  
TOBACCO, AND FIREARMS, INVOLVING THE CONFISCATION OF EQUIP-  
MENT, RECORDS, DOCUMENTS AND ENTIRE INVENTORIES OF INDIAN  
SMOKE SHOPS IN THE STATE OF WASHINGTON. THE CHAIRMAN  
EXPRESSES HIS CONCERNS WITH THE DETAINING OF PERSONS WITHOUT  
AN ARREST WARRANT AUTHORIZING SUCH DETENTION AND THE \*\*

	Referred To:	Date:		Referred To:	Date:	
(1)	CRM;MUELLER	02-03-92	(5)			W/IN:
(2)	OLA;RAWLS	03-20-92	(6)			
(3)	CRM;MUELLER	04-02-92	(7)			PRTY:
(4)			(8)	OLA;RAWLS	04-09-92	1
	INTERIM BY:			DATE:		OPR:
	Sig. For:	AG.		Date Released:	SEE "9"	MLH

Remarks

\*\* UNAUTHORIZED SEIZURE AND PROPOSED SALE OF WHOLE  
INVENTORIES. ENCLOSURES.  
EXEC SEC SENT COPIES TO OAG, OAG (STEVENS), DAG, ENR,  
OLA (DeSANCTIS). ORIGINAL TO AG FILES.  
(1) PREPARE RESPONSE FOR THE SIGNATURE OF THE AG. RETURN  
TO EXEC SEC, WITH COPY OF INCOMING LETTER, FOR FURTHER  
COORDINATION.

Other Remarks:

(2) LETTER PREPARED BY CRM FOR AAG RAWLS SIGNATURE (ORIG.  
ASSIGNED FOR AG SIG).  
(3) SEE NOTE FROM OLA. LETTER RETURNED FOR UPDATE.  
RETURN TO EXEC SEC.MLN

OLA CONTACT: JOE DeSANCTIS (514-2113)

FILE: INDIAN AFFAIRS

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY  
\*\*\*\*\*





U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

APR 14 1992

Honorable Daniel K. Inouye  
Chairman  
Select Committee on Indian Affairs  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

The matter referred to in your recent letter apparently pertains to the seizures of cigarettes and other items, pursuant to the Trafficking in Contraband Cigarettes statute, 18 U.S.C. § 2341, et seq., from Indians on reservations located in the State of Washington. These seizures, pursuant to federal search warrants executed by the Bureau of Alcohol, Tobacco and Firearms (ATF), are the subjects of suits for injunctive relief, declaratory judgment, return of property and damages filed in January 1992 by Gloria R. Bean, a Puyallup Indian doing business as "Indian Smokeshop," and by Terry Eugene Tonasket, a member of the Confederated Tribes of the Colville Reservation, both against the ATF.

You will appreciate that we are not in a position to discuss the matter due to the pendency of the Bean and Tonasket cases.

Your concern in this matter is appreciated.

Sincerely,

W. Lee Rawls  
Assistant Attorney General



DANIEL K. INOUE, HAWAII, CHAIRMAN  
JOHN MCCAIN, ARIZONA, VICE CHAIRMAN

DENNIS DECONCINI, ARIZONA  
QUENTIN N. BURDICK, NORTH DAKOTA  
THOMAS A. DASCHLE, SOUTH DAKOTA  
KENT CONRAD, NORTH DAKOTA  
HARRY REID, NEVADA  
PAUL SIMON, ILLINOIS  
DANIEL K. AKAKA, HAWAII  
PAUL WELLSTONE, MINNESOTA

FRANK H. MURKOWSKI, ALASKA  
THAD COCHRAN, MISSISSIPPI  
SLADE GORTON, WASHINGTON  
PETE V. DOMENICI, NEW MEXICO  
NANCY LONDON KASSEBAUM, KANSAS  
DON NICKLES, OKLAHOMA

PATRICIA M. ZELL,  
STAFF DIRECTOR/CHIEF COUNSEL  
DANIEL N. LEWIS, MINORITY STAFF DIRECTOR

## United States Senate

SELECT COMMITTEE ON INDIAN AFFAIRS

WASHINGTON, DC 20510-6450

December 12, 1991

The Honorable William P. Barr  
Attorney General  
U.S. Department of Justice  
Constitution Avenue and Tenth Street, N.W.  
Washington, D.C. 20530

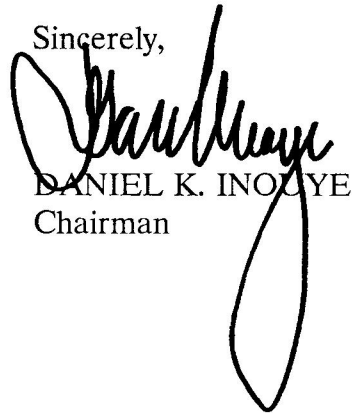
Dear Mr. Attorney General:

I am writing to request your investigation into a recent action of the Bureau of Alcohol, Tobacco and Firearms in the State of Washington involving the confiscation of equipment, records, documents and entire inventories of Indian smoke shops in the State of Washington. I am enclosing documentation that has been provided to me with regard to the process that was followed by Bureau agents in terms of detaining people for six hours in the absence of an arrest warrant authorizing such detention.

The seizure and proposed sale of whole inventories is an additional concern, as it is my understanding that the grounds for seizure of cigarette inventories must be related to cigarettes sold to non-Indians and that seizure of that part of an inventory which represents sales to tribal members would not be authorized.

I would appreciate a report on your investigation into this matter at your earliest possible convenience.

Sincerely,



DANIEL K. INOUE  
Chairman

RECEIVED  
DEPARTMENT OF JUSTICE  
92 JAN 31 P5:39  
EXECUTIVE SECRETARIAT



PIYALLUP TRIBAL POLICE  
VOLUNTARY STATEMENT

C# \_\_\_\_\_

DATE: Nov. 27, 1991 TIME: \_\_\_\_\_ PLACE: Indian Smoke Shop

I, Gloria R. Bean am 43 years of age and my address is 7402 Pacific  
Hwy E. Tacoma WA 98424 do hereby make the following statement to \_\_\_\_\_

Ken Baker he/her having first identified him/herself as a \_\_\_\_\_

Puyallup Tribal Police knowing that I may have an attorney in my behalf  
present and that I do not have to make any statement nor incriminate my-  
self in any manner. I make this statement voluntarily, of my own free will  
knowing that such statement could later be used against me in any court  
of law, and I declare that this statement is made without any threat,  
coercion, offer of benefit, favor or offer of favor, leniency or offer of  
leniency by any person or persons whomsoever. (Initials: GRC)

TIME STATEMENT FINISHED: \_\_\_\_\_ A.M./P.M. PAGE 1 OF 6

I have read this statement consisting of \_\_\_\_\_ page(a) and the facts con-  
tained therein are true and correct;

WITNESS \_\_\_\_\_

Gloria R. Bean  
(Signature of person giving voluntary statement)



pg. 2, Nov. 27, 1991 YKB

I submit this as my report of a \$130,000 - \$150,000 armed robbery of stock and equipment, including a new computer and fax machine, that took place at my business, Indian Smoke Shop. Also taken were records and documents both related to the business and other materials irrelevant to the smoke shop, such as; 2 Seahawks tickets, a collectors series of 792 baseball cards, and my children's school reports and pictures.

I know it is a robbery because I have a current valid business license through Puyallup Tribe, my governing authority. Puyallup Tribe has a tax and license code signed by Department of Interior to conduct the sale of tobacco products.

At 9:30 P.M. November 22, 1991 Leslie Gallegos, my 21 year old adopted daughter shouted "Gloria, Gloria there are lots of men here with guns and shields and they want you to come downstairs". I got up from a sound sleep, and hurried down the stairs barefoot and in my pajamas.

In the recent past, several Indian businesses have been robbed. Racism sets us up as a natural target for hate attacks. The volume of business, our race, and lack of adequate law enforcement place us at risk. We always are concerned for our safety if crooks or "Indian fighters" decide we're the target.

Leslie, my 17 month old grand daughter Eden, and Dinah my 18 year old houseguest were being held at gunpoint by a man. The gun appeared to be an automatic weapon. There were several other men in my home, on my porch, and in my yard.

They had not produced a warrant, had not shown I.D., had not told us we were under arrest. My only clue that they were not neo nazis, a street gang, or "common criminals" were the flashing blue lights.

I stepped into the room and found myself at gunpoint, as I came across the floor, the man tracked me with the gun barrel. He ordered all of us to sit on a tiny 2 person couch, by the open door. The girls had thin indoor clothing, I was dressed in sweats, Eden was wearing a thin t-shirt suit. The room quickly cooled to the cold outdoor temperature. Our orders were to "stay there, don't move".

I was asked whether there was anyone else in the house for the first time, this question was repeated over and over. I told them nobody else was in the house and they could look. They either didn't believe me, or each one had to ask for themselves.



p8-3 Nov. 27, 1991 ARB

I realized the men were wearing bullet proof vests and had the paraphernalia of law enforcement. Some had ATF on their jackets in huge big letters like the street gangs have on their Raiders jackets. There were floodlights in the yard from cars and helicopters. There were other men wearing dark jackets and dark green uniforms that did not have the letters ATF, I recognized some from Pierce County Sheriffs, others from Washington State Patrol.

I could see men swanning in and out of my business, they would stop and say, "agent leaving". I assume they identified themselves so they would not be shot. I started asking to see my son Billy who was working as cashier in the shop, and to see if the other employees and customers were all right. The robber said, "no mam, you can't go anywhere". They kept telling me I wasn't under arrest, at least 3 or 4 times.

The robbers left the door hanging open for about 2 hours in 35 degree weather. The house was like a refrigerator. Baby Eden had had a bad cough all week, they left her freezing cold for close to an hour before permitting us to get something to wrap her in. When Leslie went to get a blanket she was fumbling around in the closet, I was terrified that the robbers would think she was searching for a weapon and would shot her. She was so scared, she was crying.

I am usually an assertive strong person. They had not presented me with any warrent, nor did they place me under arrest. They intimidated me by keeping guns pointed at me, and the children I'm responsible for.

I requested permission to turn off the television. I put on a Chief Dan George record of good Indian words for spiritual support to help us out. I held my hands up to the Creator and cried and prayed and took care of myself that way. I took cedar and a feather and brought the girls together to be brushed off. We clean ourselves up that way to protect ourselves against the anger and jealousy directed against us and to call our protecting spirits to help us out. The robbers stood and stared at us, with no respect for our freedom of religion and right to privacy. The girls and I sat on the floor and prayed together in our own way.

Only one robber was still in the house. He finally noticed how cold we were and offered to get a blanket if we'd tell him where they were. He got two blankets for the girls. He told us we weren't under arrest and didn't have to sit on the floor. I told him we were comfortable sitting together that way.



pg. 4, Nov 27, 1991 HKB

I was really scared and have weak kidneys so I asked to use the lavatory after about an hour and a half. I was told I couldn't until a female "agent" came. I had already seen a female robber on the porch talking to the robbers in the house. It was another half hour before another female robber arrived to supervise me using my own bathroom in my own home. Although I had been told I wasn't under arrest, she told me not to try to escape because there were armed "agents" in the yard that were watching and would shoot if I tried to escape.

When I came out of the bathroom a different man had come into the house. He was the first person to show a badge and identify himself and asked to sit with me at the table. He had some questions to ask; my name, whether I was the owner of the business, he asked for my drivers license so I went and got it, I got part way up the stairs and realized I'd lost my "escort" but she knew her way so I went on ahead. He asked for license plate numbers and vehicle descriptions, and information about other vehicles. I provided the information I had and suggested he look himself for the other information. He was agreeable.

I asked if I could get dressed. (this was very dehumanizing, I haven't needed permission to dress and go potty since I was about 4 years old. Here I am a grandmother asking strangers if it's okay.) I got permission and the female robber came with me to my room. She stood about 4 feet from me and watched me dress. I asked her, "wasn't it a nice day today?". She told me she works in Seattle in an office with no window, so she didn't know what kind of a day it was. When I got back downstairs I returned to the table for further questioning. The robber wanted to know my personal involvement in the business. I told him I had been cooperative but was not willing to answer any further questions.

The warehouse door moved open without an agent identifying himself, all 7 or 8 of the robbers spun around with pointed automatic weapons. I started crying because I had no way of knowing whether one of my other 5 sons, 22 to 7 years of age had been dropped off early and were trying to come home, or if Bill, Billy, or my night watchman were coming back to the house to make sure we were okay. I have a large involved circle of relatives and friends and I was terrified that the robbers would kill some person who is part of my life.

Bill Flores, the father of my children and manager of Indian Smoke Shop, is an army veteran, and an ex Tribal officer. He was afraid Billy would make the wrong move and be shot. He was afraid for us in the house.



pg. 5 Nov. 27, 1991 ARK

Our night watchman is a very trusting elder. He was held at gunpoint by a female robber who asked him, "what do you have in the bag?". He showed them his tacos and offered her one. He was told to, "stand in the doorway (of the shop) for two hours". It was freezing cold, he stood for about a half hour shivering and than told the robbers he was supposed to be working, could he sweep the parking lot to keep warm. They did have the compassion to let him sweep, but they did not invite him to come into the shop to sit down.

The robbers were asked to leave several times. They were told the party's over, it's time for you to leave. They said they didn't have permission to leave yet. Finally at 3:45 A.M. they left. The robbers did not physically harm any of us other than terrorizing us, and making us cold, exhausted, helpless, and miserable.

They did steal valuable perishable tobacco products that I need to conduct my business. My business has been disrupted because my customers have seen yellow tape labeled "crime scene" surrounding Indian Smoke Shop. It certainly was a crime scene, they robbed me and traumatized my family. I have been told by employees and other witnesses that the robbers had at least 3 rental vans and they encircled my entire property with crime scene tape. They had at least 8 undercover cars, Washington State Patrol, and Pierce County Sheriff cars, and 3 vans. This is organized crime. The robbers represented several jurisdictions, one female robber was from Seattle, another from Portland, and Nisqually cars were present.

I finally was allowed to make a copy of the warrant at about 1:30 P.M., after the robbers had left my home. The robber that let me copy it said he didn't have permission to give me the original.

I expect tribal law enforcement and the tribe to seek restoration of my perishable tobacco products and compensation for damages including trauma and loss of business. These crooks have interfered with my continuing supply of tobacco products and are illegally attempting to close my business down.

These robbers pushed into my home without my consent with drawn guns and held me and my children at gunpoint for several hours. This is breaking and entering and kidnap of myself and my family members. My home was not included in the warrant, they did not have even false authority to enter my home. They pulled out of the house and released us just minutes short of 4 hours. I believe they knew they had no right to be there and were covering their asses because they knew they shouldn't be holding us without charges.



pg. 6 Nov. 27, 1991 HRS

My property was taken without any opportunity for myself or my agents to inventory. My business records, necessary for payment of bills, including taxes, have been stolen. This will cause unimaginable problems both immediately and in the future.

I expect Puyallup Tribe to assist me in seeking restitution for the damage done and protection against any further illegal attacks against my person, my property, and my family.

Indian Smoke Shop provides direct family support for 28 households. This theft deprives approximately 126 Indian people of their primary basic life support and additional dozens of families and individuals who rely on us for assistance in; temporary subsistence, cultural and religious materials and support, travel, funeral, memorial, and wedding ceremonies, emergency clothing, medical assistance, and other loans and donations.

The tribe is now deprived of a steady source of revenue to support their various programs and services, because we are illegally being forced to use stock with Washington State Stamps.

✓ The aforementioned is true to the best of my knowledge

Gloria R. Bean  
Gloria Bean aka

Y-Yet-Tel  
Y-Yet-Tel

Nov. 27, 1991  
Date



# INVOICE

INDIAN SMOKE SHOP  
7402 PACIFIC HWY. E.  
TACOMA, WA 98424  
822-3001

SHIPPED TO

Taken By ATF  
ON 4/22/91

DATE	DATE SHIPPED	OUR ORDER NO.	YOUR ORDER NO.	TERMS	F.O.B.	SALES PERSON	SHIPPED VIA
QUANTITY ORDERED	QUANTITY SHIPPED	DESCRIPTION				PRICE	AMOUNT
53	CASES	Korean Cigs					25.40
96 1/2	CASES	ASSORTED CIGS					95.2450
26	Boxes	CONTAINING APP 25 TO 30 CIGS ASSORTED CIGS					12.9300
1		Computer					6.0000
1		MONITOR					30.0000
1		Fax Machine					60.0000
20 TO 25		Computer Disk Hard + soft					90.0000
1		TELEPHONE					80.0000
1 A		ALL Receipts + Paper work					
1 B							
1		pkg of San Hwa Sesu T. CIGS					
2 A		all Book Depot Required					
2 B		Saver's Office Kids School work					
		AND Pictures personal papers					
3 A		2 or 3 Video Tapes of STUFF					32.0000
		Recordings For pass 3 weeks					

AMERICAN OVERSIGHT

APP 600481 CRTS 16454 DocId: 70106672 Page 111

THANK YOU

NARA 18-1003-A-00254

1146236  
150163030



# United States District Court

WESTERN

DISTRICT OF  
AT TACOMA

WASHINGTON

In the Matter of the Search of

(Name, address or brief description of person or property to be searched)

INDIAN SMOKE SHOP and adjacent, but unattached **SEARCH WARRANT**  
 7402 PACIFIC HIGHWAY EAST yellow stand type structure  
 MILTON, WASHINGTON CASE NUMBER: 91-1432M-05

TO: DOUGLAS K. KROGH, Special Agent, ATF and any Authorized Officer of the United StatesAffidavit(s) having been made before me by DOUGLAS K. KROGH who has reason to

Affiant

believe that ☐ on the person of or ☒ on the premises known as (name, description and/or location)

SEE ATTACHMENT "A"

In the WESTERN District of WASHINGTON there is now  
 concealed a certain person or property, namely (describe the person or property)

SEE ATTACHMENT "B"

I am satisfied that the affidavit(s) and any recorded testimony establish probable cause to believe that the person or property so described is now concealed on the person or premises above-described and establish grounds for the issuance of this warrant.

YOU ARE HEREBY COMMANDED to search on or before DECEMBER 6, 1991

Date

(not to exceed 10 days) the person or place named above for the person or property specified, serving this warrant and making the search ~~for the daytime hours 8:00 A.M. to 6:00 P.M.~~ (at any time in the day or night if time reasonable cause has been established) and if the person or property be found there to seize same, leaving a copy of this warrant and receipt for the person or property taken, and prepare a written inventory of the person or property seized and promptly return this warrant to a United States Magistrate Judge as required by law.

November 22, 1991

Date and Time Issued

FRANKLIN D. BURGESS

United States Magistrate Judge

Name and Title of Judicial Officer

FOIA # 60048 (UBTS 16457) DocId: 70106672 Page 112

Signature of Judicial Officer

NARS-1003-A-002524



1. The following records, documents, or electronically stored information for the period January 1, 1988 through November 22, 1991 relating to each and any of the following persons or entities: Larry CLINKENBEARD, Dorothy CLINKENBEARD, Clint RICE, Jamie CLINKENBEARD-RICE, BUSTED ASS RANCH, JOE'S SMOKE RING, LITTLE JOE'S, JOE'S FOOD FARM, MULE ACRES, MULE PALACE, WORLD CLASS OUTFITTERS, and WHOLESALE PETROLEUM PRODUCTS.
  - a. All records and documents relating to the purchase of cigarettes by the Indian Smoke Shop and/or Ralph Hale and/or Kurt Hale or other entities in which the Indian Smoke Shop and/or Ralph Hale and/or Kurt Hale have a managerial, financial, or business interest from Larry CLINKENBEARD, Dorothy CLINKENBEARD, Clint RICE, Jamie CLINKENBEARD-RICE, BUSTED ASS RANCH, JOE'S SMOKE RING, LITTLE JOE'S, JOE'S FOOD FARM, or any other entity in which Larry and/or Dorothy CLINKENBEARD have a managerial, financial, or business interest. Such records and documents include, but are not limited to, contracts, agreements, disbursement journals or ledgers, invoices, receipts, internal notes and memoranda, correspondence, envelopes, and records of payment (checks, money orders, cashiers checks, wire transfers or other means of funds transferred).
  - b. Any and all electronic devices which are capable of analyzing, creating, displaying, converting, or transmitting electronic or magnetic computer impulses or data. These devices include computers, computer components, computer peripherals, word processing equipment, modems, monitors, printers, plotters, encryption circuit boards, optical scanners, external hard drives, and other computer relating electronic devices.
  - c. Any and all information and/or data stored in the form of magnetic or electronic coding on computer media or on media capable of being read by a computer or with the aid of computer related equipment. This media includes, but is not limited to floppy diskettes, fixed hard disks, removable hard disk cartridges, tapes, laser disks, video cassettes, and any other media which is capable of storing magnetic coding.
  - d. Any and all written or printed material which provides instructions or examples concerning the operation of a computer system, computer software, and/or any related device.

Such records or documents herein described as items to be seized may be in the form of paper product documents, recording tapes, or may be information and/or data stored in the form of magnetic or electronic coding on computer media, or on media capable of being read by a computer, or with the aid of computer related equipment. This media includes, but is not limited to, floppy diskettes, fixed hard disks, removable hard disk cartridges, tapes, laser disks,



video cassettes, and any other media which is capable of storing magnetic coding.

2. All FAX machines that have the capability of storing a listing of incoming and/or outgoing FAX transmissions.
3. All telephone answering machine outgoing message cassettes and incoming message cassettes.
4. Cigarettes or tobacco products constituting contraband under State law and all packaging.
5. Vehicles capable of transporting cigarettes including but not limited to vehicles bearing registration numbers Washington Registration 649 CNI, Washington Registration LFA 265, Washington Registration 207 CNE, Washington Registration LFG 235, Washington Registration 87392 J, Washington Registration 881 DFZ, Washington Registration 803 DFZ, Washington Registration 207 CNE, Washington Registration 950 DWC, Washington Registration 612 CAF.



DESCRIPTION - LOCATION NO. 3

The INDIAN SMOKE SHOP, 7402 Pacific Highway East, Milton, Washington, is a one and one-half story brown wood frame structure with a reddish brown composition roof. A yellow stand-type structure is adjacent but not attached to the SMOKE SHOP. Attached to the SMOKE SHOP and encircling a compound area that includes a two-story brown house, is a grey wooden fence approximately five (5) feet in height. The SMOKE SHOP is situated on the northeast corner of Pacific Highway (99) and Porter Way, in Milton, Washington.



ATTACHMENT "A"



**RESOLUTION NO. 31022**

WHEREAS, the August 27, 1988 settlement agreement executed by the City and the Puyallup Tribe, and other governmental entities, provided for full cooperation between the law enforcement agencies of the Tribe and City, and

WHEREAS Section VIII F (p. 25) and Document 7 D.5 (p. 8) contemplated execution of mutual aid agreements between the City and the Tribe for law enforcement purposes, and

WHEREAS execution of a mutual aid agreement for law enforcement purposes will facilitate emergency, "first-response" by law enforcement officers of either jurisdiction, when immediate police action is necessary, and

WHEREAS full indemnification and insurance coverage is provided within said mutual aid agreement; Now, Therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

That the appropriate City officials are hereby authorized and directed to execute an agreement substantially in the same form as that on file with the City Clerk for interlocal cooperation for mutual aid (law enforcement) with the Puyallup Tribe.

Adopted AUG 21 1990

Attest: City Clerk

KBG:sp

#6662r

*Sam Vialle*  
Mayor



TRIBUTION:  
ATE - City Clerk  
ANARY - Legal  
NK - Finance  
C.DENROD - Departmental



CITY CLERK CONTRACT/AGREEMENT NO. 4221  
**REQUEST FOR ORDINANCE  
OR RESOLUTION**

CITY CLERK USE

Request #:

2425

Ordinance #:

31022

Resolution #:

Approved Council

Date:

Request Date: August 1, 1990

Requesting Department/Division/Program  
LEGAL

Submitted Or Sponsored By  
K. B. GERHARDT

Phone/Extension  
5885

August 21, 19

Preparation of an ~~Ordinance~~ Resolution (indicate which) is requested for the City Council meeting of Tuesday

Summary Title: (A brief sentence, as it will appear on the Council Agenda)

Resolution authorizing execution of interlocal cooperation agreement with the Puyallup Tribe for mutual aid (law enforcement).

5. Background Information: (Why is this request necessary?) Comments:

As indicated in the main settlement agreement of August 27, 1988, Section VIII F (p. 25) and auxiliary agreement, Document 7 D.5 (p. 8), cross-deputization of City and Tribal law enforcement officers was contemplated. This mutual aid agreement will facilitate emergency, "first-response" by law enforcement officers of either jurisdiction, when immediate police action is necessary.

6. List all material available as backup information for the request and indicate where filed:

Source Documents/Backup Material

Location of Document

Mutual aid agreement

City Clerk

7. Funding Source: (Enter amount of funding from each source)

Fund Number & Name:

Federal \$

State \$

City \$

Other \$

Total Amount

If an expenditure, is it budgeted? ☐ Yes ☐ No Where? Org #

Acct #

FOIA # 60048 (URTS 16457) DocId: 70106672 Page 117

Approved as to Availability of Funds

NARA 18-1003-A-002529



ORIGINAL

INTERLOCAL COOPERATION AGREEMENT  
FOR MUTUAL AID

THIS AGREEMENT is entered into under the Interlocal Cooperation Act (Chapter 39.34 RCW), the Washington Mutual Aid Peace Officers Powers Act (Chapter 10.93 RCW) and under the Constitution of the Puyallup Tribe of Indians and 25 USC § 81, between Pierce County ("County"), the City of Tacoma, the Port of Tacoma, and the Puyallup Tribe of Indians ("Tribe") in order to provide mutual aid as provided herein.

WHEREAS, law enforcement agencies have the responsibility for protecting lives and property and keeping the peace; and,

WHEREAS, effective law enforcement depends upon the ability of responding officers to take emergency action to protect lives and property and to preserve the peace, without regard to jurisdictional limitations; and

WHEREAS, it is necessary and desirable that a cooperative agreement be executed for the purpose of effectuating efficient law enforcement within the boundaries of the 1873 survey of the Puyallup reservation; and

WHEREAS, it is not intended that the traditional law enforcement responsibilities of the signatory agencies be altered, but rather that they be empowered to act in emergency situations; and

WHEREAS, it is intended that Tribal Police will normally respond first on trust land, using authority herein granted, and the officers of the applicable non-Tribal agency will normally respond first on non-trust land, using authority herein granted, but this understanding shall not impair the authority of any officer who has acted pursuant to a special commission.

NOW, THEREFORE, the parties agree as follows:

1. Special Commissions. Officers certified by the Washington Criminal Justice Training Commission who are employed by the Tribe and hold unlimited Tribal commissions, are hereby specially commissioned by each other party to this agreement to exercise law enforcement authority within the jurisdiction of the party granting this special commission, within the 1873 survey boundaries of the Puyallup reservation. Officers certified by the Washington Criminal Justice Training Commission who are employed by any other party to this agreement and hold unlimited commissions from their employer are hereby specially commissioned by the Tribe to exercise law enforcement authority within the jurisdiction of the Tribe, within the 1873 survey boundaries of

MUTUAL AID AGREEMENT  
PUYALLUP RESERVATION

(6/15/90) FOIA # 60048 (URTS 16457) DocId: 70106672 Page 118

Page 1 of 6

NARA-18-1003-A-002530



the Puyallup reservation. Any supplying agency may suspend or revoke the authority of any of its officers to exercise the special commission herein granted by other agencies. Any such suspension or revocation of authority for any of its officers to exercise the authority herein granted shall be immediately communicated to all parties and shall be confirmed in writing on the next business day. The parties agree to cooperate in training officers and employees to effectively implement this agreement.

2. Duration, Renewal, and Withdrawal. Any party may through its authorized officials withdraw from this agreement upon notice to each party hereto, which notice shall be confirmed in writing on the first business day following withdrawal. Withdrawal or non-execution of this agreement by any one party shall not affect the continued efficacy of the agreement between other parties. Withdrawal from this agreement by any party shall not affect or diminish authority exercised prior to delivery of required notice of withdrawal. Withdrawal shall not relieve any party of its agreement to insure without interruption and indemnify each other party as required herein for liability or expense arising out of actions prior to the time withdrawal or revocation becomes effective. This agreement shall be effective for a period of five (5) years, and shall be deemed renewed successively as to each party for five (5) years at the end of each term or renewal, unless the party to be bound has earlier withdrawn as set forth herein.

3. Applicable Procedures. When acting under a special commission, officers will follow their own agency's procedures and will remain the employees of the supplying agency. Such officers shall notify and request assistance from the agency whose authority is being exercised as soon as practicable under the circumstances, and shall transport and turn over any arrestee to the agency whose authority is being exercised. Officers holding commissions or special commissions from more than one State or local jurisdiction will be deemed to be acting under the commission or special commission of the party which would have primary jurisdiction under the laws of Washington for such matters.

4. Post-arrest procedures. Custody, further investigation, court appearances and prosecution and correction will be by the party having jurisdiction. Employing agencies and their employees will promptly complete necessary reports and will cooperate and assist upon request, where feasible, in cases in which their employees have participated.

5. Immunities. All immunities from liability and exemptions under State, Federal or Tribal laws, ordinances and regulations which law enforcement officers have, in their own jurisdiction

MUTUAL AID AGREEMENT

PUYALLUP RESERVATION

(6/15/90) FOIA # 60048 (URTS 16457) DocId: 70106672 Page 119

Page 2 of 6

NARA-18-1003-A-002531



and in the jurisdiction for whom they are acting as deputies, shall be effective in the jurisdiction in which they are giving assistance, unless otherwise prohibited by law.

6. Indemnity and Insurance. The supplying agency will indemnify, defend and hold harmless the agency whose authority is being used from liability or expense arising out of or related to the actions of its officers, except that the Tribe will indemnify, defend and hold harmless specially commissioned officers and their supplying agency from liability or expense which arises from erroneous information which it communicates concerning the tribal status of persons involved in a case or concerning information which it communicates concerning the trust or reservation status of the property where the crime was committed, provided that the aggregate amount of indemnity arising out of each incident shall not exceed \$2,000,000. The Tribe will continuously insure, and each agency of the State or of its political subdivisions will continuously insure or self-insure against the wrongful exercise of jurisdiction, including the liability herein assumed. Policies of insurance required hereunder will name as an additional insured, each signatory whose officers are granted by this agreement a special commission from the primary insured, and the officers and employees of each such signatory. Each such policy of insurance will require a ten (10) day notice to each of the signatory parties hereto, who are required to be insured, prior to the effective date of any cancellation or reduction of coverage. Policies of insurance obtained by the Tribe for the benefit of other parties hereto shall expressly prohibit the insurer from asserting a defense of sovereign immunity to claims made under the policy by a party, or officers or employees of a party. Each party will provide evidence of such insurance or self-insurance to the satisfaction of each other party.

7. Fresh pursuit and Warrants. Fresh pursuit and service of warrants concerning fugitives from prosecution for crimes committed within the jurisdiction of the Tribe is as authorized by Chapter 10.93 RCW. The same authority to engage in fresh pursuit and service of warrants concerning fugitives from prosecution in the jurisdiction where a crime was committed is authorized to officers specially commissioned by the Tribe. The parties agree to cooperate in the execution of warrants properly issued at the request of another party. Specially commissioned officers of the requesting party, along with officers of the jurisdiction whose law is applicable, may participate in serving the warrant, upon request, where feasible.

8. Governing Law, Venue, and Limited Consent to Suit. This agreement shall be governed by the laws of the State of Washington, as to interpretation and performance. Any action hereunder may be brought in the Superior Court of Washington for



Pierce County. The Tribe expressly grants a limited consent to suit only upon claims arising from its failure to continuously insure as required herein.

9. Amendments. No changes or modifications to this agreement shall be valid or binding upon the parties unless such changes or modifications are in writing and executed by the parties.

10. Severability. It is understood and agreed to by the parties hereto that if any part of this agreement is illegal, the validity of the remaining provisions shall not be affected and the rights and obligations of the parties shall be construed as if the agreement did not contain the particular illegal part. If it should appear that any provision herein is in conflict with any applicable statute, said provision shall be deemed inoperative, null and void, insofar as it may be in conflict therewith.

11. Integration. This agreement contains terms and conditions agreed upon by the parties. The parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this agreement.

12. Notice. Any notice required or permitted to be given under this agreement to a party shall be deemed sufficient if given in writing and sent by certified mail to the address stated below for each party, or to any other address to which the party may inform all other parties in writing with specific reference to this agreement:

PUYALLUP TRIBAL OFFICE  
2002 E. 28th  
Tacoma, WA 98404

PIERCE COUNTY SHERIFF  
Room 162 County-City Building  
930 Tacoma Ave. So.  
Tacoma, WA 98402

TACOMA POLICE DEPARTMENT  
Room 340 County-City Building  
930 Tacoma Ave. So.  
Tacoma, WA 98402



PORT OF TACOMA SECURITY  
One Sitcum Plaza  
Tacoma, WA 98504

DATED this 30<sup>th</sup> day of August, 1990.

ATTEST:

Glady C Rorden  
Glady C Rorden  
Tribal Council Secretary

APPROVED AS TO FORM:

Carlos delos Santos  
Carlos delos Santos  
Tribal Attorney

PUYALLUP TRIBE OF INDIANS

By [Signature]  
Roleen Hargrove  
Tribal Council Chairperson

[Signature]  
Rory Labucer  
Chief of Police

APPROVED:  
SECRETARY OF INTERIOR  
BUREAU OF INDIAN AFFAIRS

By \_\_\_\_\_  
STANLEY SPEAKS  
Area Director

APPROVED AS TO FORM:

Robert P. Dick  
ROBERT P. DICK  
Deputy Prosecuting Attorney

PIERCE COUNTY

By [Signature]  
Joe Stortini  
Pierce County Executive  
[Signature]  
CHARLES ROBBINS  
Pierce County Sheriff

PORT OF TACOMA

By \_\_\_\_\_  
Executive Director

RECOMMENDED:

[Signature]  
DONALD HARE  
Chief of Security

ATTEST:

\_\_\_\_\_  
Clerk

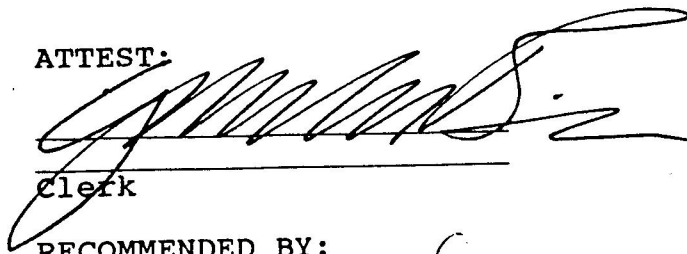
MUTUAL AID AGREEMENT  
PUYALLUP RESERVATION

(6/15/90) FOIA # 60048 (URTS 16457) DocId: 70106672 Page 122  
Page 5 of 6

NARA-18-1003-A-002534

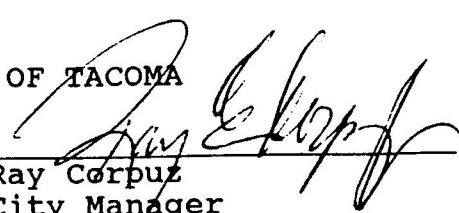


ATTEST:

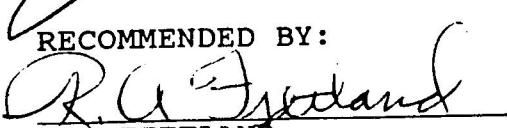
  
Clerk

CITY OF TACOMA

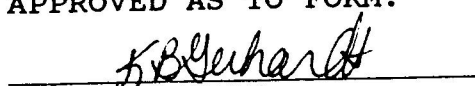
By:

  
Ray Corpuz  
City Manager

RECOMMENDED BY:

  
RAY FJETLAND  
Chief of Police

APPROVED AS TO FORM:

  
K.B. GERHARDT  
Asst. City Attorney

  
DAVID DOW  
Finance Director

depdd166.ag





# Puyallup Tribe of Indians



## MEMORANDUM

TO: NCAI

FROM: PUYALLUP TRIBAL COUNCIL

DATE: DECEMBER 1, 1991

RE: VIOLATIONS OF TRIBAL SOVEREIGNTY

=====

Attached is a resolution passed by the Puyallup Tribal Council, respectfully requesting your support in insisting that the state and federal government abide by agreements they enter into with tribes.

In 1988, the Puyallup Tribe entered into a land claims settlement agreement with the United States, the State of Washington, and other local governments and private parties. This agreement was enacted by Congress as the "Puyallup Tribe of Indians Settlement Act of 1989" (PL 101-41). Senator Dan Inouye, Chairman of the Senate Select Committee on Indian Affairs and Congressman Norm Dicks, member of the House Interior and Insular Affairs Committee, were instrumental in facilitating the negotiation of the Settlement Agreement and especially in generating the extensive support, in both houses of Congress, which resulted in this, the largest Indian land settlement (outside of Alaska) being passed by Congress in record time (approximately 6 months from introduction to enactment).

Everything in the Settlement Agreement is based on the recognition of the Tribe as a sovereign government, and on the premise that all future intergovernmental problems will be resolved by consultation and negotiation between the Tribal government and the other governmental parties. The Settlement Agreement explicitly provides, in regard to law enforcement issues, that:

"The Puyallup Tribal Police will be primarily responsible for law enforcement over tribal members on trust lands in the 1873 survey area..."

Section VIII.F.1.

Both the specific provisions and the underlying principles of the Settlement Agreement were flagrantly violated by the actions of 130 state and federal agents who recently raided 5 smokeshops licensed by the Puyallup Tribe and located on trust land within the boundaries of the Puyallup Indian Reservation.



NCAI  
December 1, 1991  
Page 2

These actions are a matter of critical importance to all Indian tribes for the following reasons:

1. Tribal Sovereignty - The outright disregard of the provisions of a Settlement Agreement enacted by both Congress and the State of Washington and to which the federal, state and local governments were all signatory parties casts serious doubt on the value of any negotiated agreement between any tribal government and any non-Indian government. If federal, state and local governments are willing to treat the tribes as co-equal sovereign governments only when they are trying to get the Tribal governments' assent to some agreement; but as soon as an agreement is signed they treat it as worth less than the paper it's written on, why should any Tribe bother to negotiate any of the many outstanding issues we have with non-Indian governments?

2. Tax base - Throughout Indian country, it is a constant struggle for Tribes to develop and maintain a sufficient tax base to support essential governmental services. Most Tribal governments are highly dependent on income from either Tribally-owned businesses, and/or taxes assessed on Tribally-licensed businesses. One of the major underlying issues which should have been addressed by consultation between the affected governments (rather than approaching the issue as a criminal investigation initiated without any attempt to resolve the problem with and through the Tribe) is: Which government(s) should be able to collect what taxes from Tribally-licensed businesses operating on trust lands? Tribally licensed retail businesses operated by tribal members on trust lands constitute almost the entire tax base of the Puyallup Tribe. The imposition of state taxes on transactions by these businesses severely erodes the Tribe's ability to impose and collect taxes from them. Preservation of the already minimal Tribal tax base is an issue of great importance for all Tribes, and we propose that Congress be approached to enact legislation protecting the Tribe's ability to maintain a tax base.

3. Right to inter-tribal trade - The Indian Tribes in this country have had a long-standing tradition of trade among themselves before the United States ever came into existence. Some of our treaties recognize the right to inter-tribal trade, and it is a right we believe should be recognized by the United States government. If Tribes are ever going to develop our own economic base, we must be free to engage in inter-tribal trade, without state interference, and with minimal federal regulation. Primary regulation of inter-tribal trade should be through inter-tribal compacts. Again this would be an appropriate area for Congressional action.



NCAI  
December 1, 1991  
Page 3

We are asking that you adopt a resolution (see draft resolution, attached), specifically supporting the Puyallup Tribe of Indians in regard to the recent violations of our sovereign status, and calling upon Congress to address the serious issues outlined above.

Thank you in advance for your support of the Puyallup Tribe, on these issues which impact all of us.



NATIONAL CONGRESS OF AMERICAN INDIANS  
RESOLUTION NO. 9101

WHEREAS, the Puyallup Tribe of Indians is an Independent sovereign nation located on the Puyallup Indian Reservation in Tacoma, Washington; and

WHEREAS, on Friday, November 22, 1991, some one-hundred and thirty state and federal agents conducted raids on five tribally licensed, Indian owned retail businesses located on trust property within the Puyallup Indian Reservation; and

WHEREAS, none of the agencies involved made any attempt to consult with the Puyallup Tribe at any time prior to conducting these raids; and

WHEREAS, similar raids were conducted at the Colville Confederated Tribes, Spokane Tribe, and the Confederated Salish and Kootenai Tribes of the Flathead Reservation on the same date, and

WHEREAS, The Medicine Creek Treaty of 1854 recognizes the Puyallup Tribe as a sovereign government, and has been upheld numerous times in federal courts, and

WHEREAS, it has been the stated policy of the United States government for over twenty years to respect tribal sovereignty and deal with tribes on a government to government basis, and

WHEREAS, the Puyallup Tribe of Indians is a signatory to the 1989 Centennial Accord between the State of Washington and Indian Tribes of the State of Washington, which explicitly states that the State of Washington will relate to tribes on a government to government basis, and

WHEREAS, in 1990, the Puyallup Tribe, the United States of America, the State of Washington, and other local governments and private parties entered into the Puyallup Tribal Land Claims Settlement Agreement, which was adopted by the State legislature, and authorized by an act of Congress, and which is premised on the recognition of the tribe as a sovereign government, and resolution of future intergovernmental problems by consultation and negotiation, and

WHEREAS, the actions of the state and federal agencies on November 22, 1991, violated all of the above-referenced agreements and policies, disregarded the tribe's status as a sovereign government,



and seriously undermined the government to government relationship between the Puyallup Tribe and these agencies; and

WHEREAS, throughout Indian Country the violation of treaties, state and federal legislation, and explicit negotiated agreements between tribes and other governments, violates tribal sovereignty and undermines government to government relationships between tribes and all other governments, and

WHEREAS, approximately one-third of the Puyallup Tribe's operating revenues are derived from the taxes collected from the retail businesses licensed by the tribe, and operated by Puyallup Tribal members, and tribal tax revenues support essential governmental and social services, and

WHEREAS, it is a constant struggle throughout Indian Country to develop and maintain a sufficient tax base to support essential social and governmental services, and preservation of the already minimal tribal tax base is an issue of great importance for all tribes, and

WHEREAS, the Indian Tribes in this country have had a long-standing tradition of trade among ourselves before the United States came into existence and both federal policy recognizing the right of Tribes to self-determination, and tribal economic development require that tribes be free to engage in inter-tribal trade without state interference, and with minimal federal regulation;

NOW, THEREFORE BE IT RESOLVED, the National Congress of American Indians call upon the Governor for the State of Washington and members of Congress to reaffirm recognition of the Puyallup Tribe's sovereignty and their commitment to abide by all of the above-referenced agreements, and to take immediate steps to restore the government to government relations, and

BE IT FURTHER RESOLVED, that the National Congress of American Indians calls upon the Congress of the United States to enact legislation to maintain and preserve our tribal tax base from erosion by state taxation; and

BE IT FINALLY RESOLVED, that the National Congress of American Indians calls upon Congress of the United States to enact legislation recognizing and preserving the right of Tribes to engage in inter-tribal trade free of state interference or regulation.

submitted by:



Marguerite Edwards, Chairperson

on behalf of the PUYALLUP TRIBE OF INDIANS